

COURT FILE NUMBER **1901-08251**

COURT **COURT OF QUEEN'S BENCH OF ALBERTA**

JUDICIAL CENTRE **CALGARY**

APPLICANTS **NATIONS FUND I, LLC**

DEFENDANT **BEARSTONE ENVIRONMENTAL SOLUTIONS INC.**

DOCUMENT **PROPOSED RECEIVERS'S REPORT**

**JULY 17, 2019**

ADDRESS FOR SERVICE AND  
CONTRACT INFORMATION OF  
PARTY FILING THIS DOCUMENT:

**PROPOSED RECEIVER**

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## ***Listing of Appendices***

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Appendix "A" – KPMG Inc. Consent to Act as Receiver

Appendix "B" – Asset Purchase and Sale Agreement

## ***1. INTRODUCTION AND PURPOSE OF REPORT***

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1. Pursuant to an affidavit sworn by Gerry Kerkhoff, president of Bearstone Environmental Solutions Inc., (“**Bearstone**” or the “**Company**”), sworn on July 11, 2019 (the “**Kerkhoff Affidavit**”), Bearstone is a body corporate incorporated in the Province of Alberta, and is a wholly-owned subsidiary of New West Energy Services Inc. (“**New West**”) which is a public company listed on the TSX Venture Exchange. Bearstone provides environmental oilfield services to the oil and gas industry throughout Western Canada. Primary service offerings include environmental consulting services, vacuum and water trucks, as well as fluid transportation. Bearstone’s senior secured lender is Nations Fund I, LLC (“**Nations**” or the “**Lender**”).
  
2. KPMG Inc. (“**KPMG**”, the “**Proposed Receiver**”) understands that an application is to be made to the Court of Queen’s Bench of Alberta (the “**Court**”) by Nations seeking the following in respect of Bearstone (the “**Application**”):
  - a) An order (the “**Receivership Order**”) (substantially in the form of the Receivership Order filed in connection with the Application), appointing the Proposed Receiver as Receiver and Manager over all the current and future assets, undertaking and property of Bearstone pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”); and
  
  - b) If the Receivership Order is granted, an order (the “**Approval and Vesting Order**”) (substantially in the form of the Approval and Vesting Order filed in connection with the Application):
    - i. Authorizing and directing the Receiver to adopt and close the Proposed Transaction (as defined and discussed below); and
  
    - ii. Vesting the Purchased Assets (defined herein) in and to Silverpoint Energy Services Inc. (“**Silverpoint**” or the “**Purchaser**”), free and clear of all claims (other than permitted encumbrances set out in the Approval and Vesting Order).

3. KPMG is a trustee within the meaning of section 2(1) of the *Bankruptcy and Insolvency Act* and has provided its consent to act as receiver (attached as **Appendix “A”**) in these proceedings in the event that the Court grants the Receivership Order.
4. Further background and information regarding the Company and the receivership proceedings will be made available on the Proposed Receiver’s website, if the Receivership Order is granted, at <http://home.kpmg/ca/bearstone>.

### ***Terms of Reference***

5. In preparing this Proposed Receiver’s Report (the “**Report**”) and making the comments herein, KPMG has been provided with, and has relied upon certain unaudited, draft and/or internal financial information, Company records, Company prepared financial information and projections, discussions with management (the “**Management**”) and employees, and information from other third party sources (collectively, the “**Information**”).
6. The Proposed Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Proposed Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Handbook, and accordingly the Proposed Receiver expresses no opinion or other form of assurance in respect of the Information.
7. Some of the information referred to in this Report consists of financial forecast and projections. An examination or review of the financial forecast and projects, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
8. Certain information referred to in this Report is based on Management’s estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence no assurance can be provided regarding the forecasted or projected results. Indeed, the reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.
9. The Proposed Receiver has prepared this Report in connection with the Application to be heard on July 23, 2019. This Report should not be relied on for other purposes.

10. Information and advice described in this Report that has been provided to the Proposed Receiver by its legal counsel, Cassels Brock & Blackwell LLP (“**Cassels Brock**”, or the “**Proposed Receiver’s Counsel**”), was provided to assist the Proposed Receiver in considering its course of action, and is not intended as legal or other advice to, and may not be relied upon by, any other person.
11. Capitalized terms not otherwise defined herein are as defined in the Company’s application materials, including the Affidavit of Mark Skura sworn June 12, 2019 (the “**Skura Affidavit**”) filed in support of this Application, the Kerkhoff Affidavit, and the APA (defined herein). This Report should be read in conjunction with the Skura Affidavit as certain information has not been included herein to avoid unnecessary duplication.
12. Information in this Report is based upon the following sources:
  - a) Our work with Bearstone;
  - b) The Kerkhoff Affidavit;
  - c) The Skura Affidavit; and
  - d) The Application.

In particular, the Information contained in the “Business Operations”, “KPMG Prior Involvement with Bearstone” and “Financial Matters” sections of this Report was obtained from the Kerkhoff Affidavit:

13. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

## **2. BACKGROUND**

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### ***Business Operations***

14. Bearstone’s headquarters and registered office is located in Calgary, Alberta. Bearstone has operations in the Grande Prairie and Medicine Hat regions. Substantially all of the financial books and records of the Company are located in the Calgary office. Certain other records (such as equipment maintenance records) are located at the Medicine Hat and Grande Prairie offices.
15. The Calgary location of Bearstone primarily focuses on providing environmental consultation services to its clients, while the Medicine Hat and Grande Prairie operations offer oilfield services such as vacuum, water trucks and fluid transportation equipment.
16. The activity at Bearstone’s Grande Prairie operations decreased significantly towards the end of 2018 as a result of declining market conditions. We understand that management made the decision to cease operations at the Grande Prairie location in December 2018. Certain assets and employees remain at the Grande Prairie site following the wind-down, and are detailed herein.

### ***Summary of Assets***

17. A significant portion of Bearstone’s assets are subject to a security interest in favour of Nations, while certain other assets are financed through equipment lease agreements with various other lenders (the “**Other Lenders**”). Bearstone’s major equipment assets are:
  - a) Approximately 61 pieces of equipment (49 of which are secured by Nations and 12 of which are secured by Other Lenders) located at the Grande Prairie location (the “**Grande Prairie Assets**”); and
  - b) Approximately 44 pieces of equipment (12 of which are secured by Nations, 24 of which are secured by Nations’ General Security Agreement, and 8 of which are secured by the Other Lenders) located at the Medicine Hat location (the “**Medicine Hat Assets**”).

### ***Employees and Contractors***

18. Bearstone has a total of 37 employees, 13 of which are salaried and 24 of which are paid hourly. The employees are located in Calgary (7), Medicine Hat (26), and Grande Prairie (4). Bearstone’s employees are not unionized.

### ***KPMG prior involvement with Bearstone***

19. Bearstone first contacted KPMG in April 2019 to discuss certain restructuring alternatives. Subsequently, Bearstone engaged KPMG on or about May 16, 2019 to undertake certain analysis and contingency planning and prepare for potential formal restructuring proceedings.
20. Prior to KPMG's engagement, Bearstone and Nations were contemplating a transaction that would establish a new entity into which a portion of Bearstone's assets would be transferred. KPMG's engagement specifically excluded any role in the negotiation of the terms of this transaction.

### ***Financial Matters***

21. The depressed oil and gas prices experienced since 2014 have had a significantly negative effect on Bearstone's business. Bearstone first started to have financial challenges in 2016, concurrent with a general downturn in the oil and gas industry in Western Canada. Bearstone attempted to manage these challenges by laying off employees, reducing wages, and arranging for capital injections.
22. In March 2017, Bearstone entered into an agreement with Nations to acquire approximately \$4.8 million worth of fluid transportation assets in Grande Prairie. As part of this transaction Bearstone was able to restructure and refinance its existing debt, with Nations retiring that existing senior debt. Initially the restructuring and refinancing was successful, but in early 2018 Bearstone encountered major equipment repair requirements which created pressure on its cash flow and operations. Bearstone took various steps to try and address these challenges, with some initial success, but the production curtailment program mandated by the government of Alberta in November 2018 resulted in a drastic decline in activity in the Grande Prairie region (which continued into 2019), and an approximately 75% drop in revenues for the Bearstone's Grande Prairie division.
23. In the second quarter of 2019 the decision was made to stem these losses by ceasing operations at Bearstone's Grande Prairie operations. Various merger and other strategic opportunities were explored – including potential mergers, sales, or refinancing – but those efforts were ultimately unsuccessful.



24. Bearstone is consequently unable to service its existing debt. Absent continued advances from the Lender, or alternative financing, Bearstone is unable to fund its operating costs.
25. Pursuant to the Skura Affidavit, as of June 6, 2019, Bearstone has an outstanding loan balance of \$5.13 million owed to Nations pursuant to the Loan and Security Agreements. Further details on amounts owing to the Lender can be found in the Skura Affidavit.
26. On June 10, 2019, a demand letter and Notice of Intent to Enforce Security (the “**NOI**”) were sent by Nations to Bearstone by facsimile and by courier.

### ***Security Review***

27. The Proposed Receiver’s Counsel has undertaken a review of the validity and enforceability of the security held by the Lender. With respect to the Purchased Assets, the Proposed Receiver’s Counsel has advised that the Lender has a valid security interest in the right, title and interest of the Company in the Purchased Assets, subject to certain standard assumptions and qualifications as well as the following qualifications:
  - a) The Proposed Receiver’s Counsel has identified certain garage keepers’ liens (collectively, the “**Liens**”) registered against a small number of the Purchased Assets. To the extent that these Liens constitute valid and enforceable liens that remain unpaid, it is the view of the Proposed Receiver’s Counsel that these Liens will either need to be assumed by the Purchaser or paid out as a condition of the Proposed Transaction. The parties to the Proposed Transaction are continuing to investigate these liens to determine their validity and to determine how best to address any outstanding Liens; and
  - b) For the time being, the Proposed Receiver’s Counsel has excluded from the scope of its security review the following asset: 2011 Kenworth 1NKDXBEX3BJ946734 (the “**Excluded Asset**”). The Excluded Asset appears to remain subject to a prior registration involving a different secured party and a different debtor (the “**Other Registration**”). The Proposed Receiver’s Counsel has not been provided with copies of the security documents underlying the Other Registration against the Excluded Assets and can therefore not opine on the validity and enforceable of the security interest underlying the Other Registration. The parties to the Proposed Transaction are continuing discussions with respect to how best to address the Other Registration.

### ***3. PROPOSED TRANSACTION***

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28. In the event that the Proposed Receiver is appointed by the Court, Bearstone, Nations, Silverpoint, and New West will be seeking Court approval for the Proposed Receiver to adopt and close an Asset Purchase and Sale Agreement (the “**APA**”), attached hereto as **Appendix “B”**. This transaction (the “**Proposed Transaction**”), if approved by the Court, will result in Silverpoint (a company operated by primarily the same management group currently operating Bearstone), acquiring certain assets of Bearstone (the “**Purchased Assets**”), which assets consist of the Medicine Hat Assets.
29. The primary goals of the Proposed Transaction are as follows:
  - a) Transfer the Purchased Assets from Bearstone to Silverpoint;
  - b) As consideration for this transfer, Silverpoint will assume certain debt (the “**Assumed Debt**”) currently owing from Bearstone to Nations in an amount significantly in excess of the forced liquidation value (“**FLV**”) of the Purchased Assets;
  - c) Nations will consent to the assignment of the Assumed Debt by Silverpoint; and
  - d) The business and approximately 33 jobs associated with the business and the Purchased Assets will, by virtue of the Proposed Transaction, be preserved.
30. The Purchased Assets were independently appraised by Sterling Appraisal and Machinery Ltd. (“**Sterling**”) on May 22, 2019 (the “**Appraisal**”). The value of Silverpoint’s bid is significantly greater than the appraised FLV of the Purchased Assets. Moreover, the Proposed Transaction is: (i) supported by Nations (Bearstone’s senior lender); (ii) will eliminate auction risk and costs from the sale price of the Purchased Assets; (iii) will significantly reduce professional costs; and (iv) will preserve a significant number of jobs.
31. Moreover, if this transaction is approved, Silverpoint will continue to service certain of Bearstone’s key existing customers, which could assist in realization of accounts receivables during the proposed receivership.
32. Approval of the Proposed Transaction will result in approximately 33 of Bearstone’s 37 employees transferring to Silverpoint. Furthermore, Nations has agreed to fund the payment by

Silverpoint of any wage arrears owing as at the date of the appointment of the Proposed Receiver to those Bearstone employees transferring to Silverpoint.

33. If the Proposed Transaction is approved, the Proposed Receiver would not be required to operate either the Calgary or Medicine Hat operations, nor would a sale process be required for the Medicine Hat operations and assets, resulting in reduction in both operating costs and the concomitant professional fees.
34. The Closing Date for the Proposed Transaction is July 30, 2019, or such other business day as the parties may agree in writing. It is the intention of the parties to close the Proposed Transaction on, or very near to, the date that the Proposed Receiver is appointed.
35. The purchase price (the “**Purchase Price**”) for the Purchased Assets shall be deemed to be \$2,733,911 and the same shall at closing be deemed to be paid by the Silverpoint.
36. The APA also contains a mechanism to adjust the Purchaser’s indebtedness to Nations based on funds subsequently received by the Proposed Receiver, as follows. The Purchaser’s indebtedness shall, on the day that is six months from the Closing Date (as defined herein), be adjusted and reduced by the amounts of funds subsequently received by the Receiver:
  - i. In excess of \$1,710,000 (not to be reduced by any sales commissions or other expenses) associated with the sale of assets remaining with Vendor; and
  - ii. In excess of \$1,095,291 associated with the collection of the Vendor’s accounts receivable.
37. Any adjustments to the Purchaser’s indebtedness to Nations will not affect the Purchase Price. These adjustments to indebtedness are meant to ensure that the Purchaser is made whole in the event that realizations on the Grande Prairie Assets and/or Bearstone’s accounts receivable are in excess of their estimated net realizable value. The Purchase Price will remain well in excess of the forced liquidation value of the Purchased Assets, as estimated by Sterling.

## ***4. ANALYSIS OF THE PROPOSED TRANSACTION***

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### ***Estimated Net Realization***

38. The Confidential Supplemental Report to this Report (the “**First Confidential Supplemental Report**”) discusses in detail the Proposed Receiver’s estimated realizations in two scenarios: either the Proposed Transaction is approved (the “**Transaction Scenario**”), or Proposed Transaction is not approved (the “**Receivership Only Scenario**”).
39. The Proposed Receiver highlights the following in relation to the estimated realization analysis contained in the First Confidential Supplemental Report:
  - a) As noted previously, the Purchased Assets were independently appraised on May 24, 2019 by Sterling. A copy of the Appraisal is attached as Appendix “A” to the First Confidential Supplemental Report. Approximately 25% of the assets that are subject to the appraisal are secured by Other Lenders. The Purchase Price is greater than the appraised FLV of the Purchased Assets and eliminates auction risk and costs from the eventual sale price of these assets;
  - b) If the Proposed Transaction is approved, Silverpoint will continue to service certain of Bearstone’s existing customers, which could lead to a higher realization of accounts receivables than otherwise would occur in the Receivership Only Scenario given the usual issues with collecting receivables in receivership scenarios;
  - c) Approval of the Proposed Transaction will result in approximately 33 of the Company’s 37 employees transferring to Silverpoint. As noted previously, Nations has agreed to fund the payment by Silverpoint of any wage and vacation arrears owing as at the date of the receivership to those Bearstone employees transferring to Silverpoint. As such, priority payables relating to wage and vacation arrears will be reduced in the Transaction Scenario and other employee claims, albeit unsecured, will similarly be reduced; and
  - d) If the Proposed Transaction is approved, the Proposed Receiver would not be required to operate either the Calgary or Medicine Hat operations, resulting in reduction in both operating costs and the concomitant professional fees.

40. The estimated realizations under the Proposed Transaction Scenario are approximately \$2.11 million greater than under the Receivership Only Scenario.

***Receivership Only Scenario***

41. The Proposed Receiver has contemplated the realizations generated by the Receivership Only Scenario (as outlined in the Confidential Supplement) as follows:
- a) It is unlikely the Proposed Receiver will have access to funds and/or insurance and permits to be able to operate the Medicine Hat Assets during the receivership proceedings. If the business operations are closed for several weeks, many of Bearstone's clients would likely find alternative service providers which would reduce the likelihood of the business, as operated by Silverpoint, succeeding going forward and negatively impact the likely recoveries from the assets;
  - b) The Proposed Receiver's ability to safeguard the assets will be diminished as many of the Medicine Hat Assets are currently in the field, active on jobs within the region;
  - c) The realization received from the sale of the Medicine Hat Assets will be significantly less as compared to the realization received through the sale of the business as an operating business;
  - d) Collections on accounts receivables will likely be greater if the business is sold as a going concern and Silverpoint is able to continue servicing Bearstone's existing clients. In the Receivership Only Scenario, the Proposed Receiver will likely incur increased professional fees related to collections on outstanding accounts receivables; and
  - e) The Proposed Receiver's professional fees in this scenario will be significantly higher as a result of all of the additional administrative steps required under the Receivership Only Scenario, as outlined above.

**PROPOSED RECEIVER'S COMMENTS ON THE PROPOSED TRANSACTION**

***Realizations***

42. The Proposed Receiver has considered the realizations generated by the Proposed Transactions in relation to any prejudice to other parties and would comment as follows:

- a) The consideration for the Purchased Assets under the APA exceeds the forced liquidation value of the Purchased Assets by a substantial margin. In addition, as a result of the assumption of the Nations' debt by Silverpoint, the amount of Nations' secured debt will decrease by an amount in excess of the likely value of the Purchased Assets without the Proposed Transaction;
- b) In addition, the benefits of the Proposed Transaction include a reduction in employee claims (both priority and unsecured), the reduction of potential auction costs and risks of realizations below the appraised value and a reduction in operating and professional fees;
- c) In order to preserve the relationships that Bearstone has with its clients, and the going concern value of the business, it is imperative that the Proposed Transaction be closed immediately (i.e. concurrently with the appointment of the Proposed Receiver);
- d) The Proposed Transaction will allow Silverpoint to assist with the collection of the accounts receivable thus increasing the likelihood of realization on these assets;
- e) Nations' position remains significantly under-secured and it is unlikely any other transaction will materially reduce or eliminate a shortfall to Nations;
- f) Priority creditors will not be prejudiced as sufficient assets remain in Bearstone after the Proposed Transaction to ensure these amounts will be paid in full; and
- g) Based on the Proposed Receiver's analysis, the Proposed Transaction and the concomitant receivership realization of the remaining assets of Bearstone will generate a significantly higher realization than a receivership without the Proposed Transaction.

***Going Concern Sale Possibility***

43. The Proposed Receiver has considered the possibility that a going concern sales process for all or part of the operations of Bearstone would generate additional realizations and would comment as follows:
- a) Given Management's previously unsuccessful attempts to complete a sale of its operations, a successful going concern sale of Bearstone in its current state is unlikely;

- b) The operations in Grande Prairie have essentially ceased, thus any going concern value for the Company as a whole is likely minimal;
- c) Pursuant to the Kerkhoff Affidavit, Bearstone does not have funds available to operate as a going concern during even a significantly truncated sales process. The weekly cash requirement to operate Bearstone during a marketing process would be approximately \$150,000, consisting primarily of employee wages and salaries, rent, supplies, and other operating costs. Accordingly, even a short four-week sales process could cost in excess of \$600,000 in operating costs alone, excluding professional fees. Bearstone has no ability to fund this, and Nations has indicated it is not willing to fund a sales process;
- d) Given the Company's recent financial results, it appears unlikely that an attempted sale of the Company in its current state will generate significant interest from prospective purchasers; and
- e) The Company's contracts and master service agreements are prohibited from being transferred to purchasers in a receivership. Without those contracts, the "going concern value" resides with the directors, management and key employees, value that cannot be "sold" meaning that the assets capable of being sold are effectively just the machinery and equipment.

***Related Party Transaction***

- 44. Although this proceeding is a receivership rather than a bankruptcy, the Proposed Transaction Scenario would constitute a related party transaction pursuant to subsections 30(4) to (6) of the BIA. Although these provisions do not technically apply to a related party transaction occurring as part of a receivership, the Proposed Receiver wishes to comment on the factors specifically set out in those subsections.
- 45. Section 30(4) to (5) permit a Trustee in bankruptcy to sell or dispose of a bankrupt's property to a person who is "related to" the bankrupt. Under Section 30(5) of the BIA, a related person includes: (i) a director or officer of the bankrupt; (ii) a person who has or has had, directly or indirectly, control in fact of the bankrupt; and (iii) a person who is related to a person described in (i) or (ii). In the Proposed Transaction Scenario, both Bearstone and the Purchaser are wholly owned subsidiaries of New West Energy Services Inc.

46. Subsection 30(6) of the BIA, sets out the factors to be considered by the Court in deciding whether to approve a sale to a related party. Notwithstanding that Bearstone and the Purchaser are related parties within the meaning of t subsection 30(5) of the BIA, the Proposed Receiver is of the view that the Proposed Transaction will result in an enhanced realization to creditors, particularly as compared to the Receivership Only Scenario, and that any potential issues arising from the fact that Bearstone and the Purchaser are related parties are minimized as a result of the following (among other things):
- a) Management has previously canvassed the market for the sale of Bearstone as a going concern without success;
  - b) Management’s relationships with Bearstone’s key clients are critical to successfully realizing on Bearstone’s outstanding accounts receivable. Given that most of the current employees of Bearstone will be transferred to the Purchaser, these key relationships will be preserved as part of the Proposed Transaction, which will result in higher realizations in relation to the accounts receivable;
  - c) The Proposed Transaction values the Purchased Assets significantly in excess of their appraised values and the consideration being paid under the Proposed Transaction is fair and reasonable in the circumstances and is superior to the amounts that would be generated under the Receivership Only Scenario; and
  - d) Nations, the Company’s primary secured lender, is supportive of the Proposed Transaction and is willing to allow for the assignment of the amounts outstanding to it by Bearstone in order to effect the Proposed Transaction.

#### **SEALING OF THE CONFIDENTIAL SUPPLEMENT TO THIS REPORT**

47. As noted previously, a copy of the Appraisal is attached to the Confidential Supplement. It is the intention of the Proposed Receiver to bring an application to seal the Confidential Supplement in the event that the Proposed Receiver is appointed as receiver in these proceedings.
48. Given the potential prejudice to a future sales process in the event that the Proposed Transaction is not approved by the Honourable Court or does not close, the Proposed Receiver respectfully requests that this Honourable Court seal this First Confidential Supplemental Report until the



filing of a Receiver's Certificate substantially in the form attached to the Sale Approval and Vesting Order being sought as part of the Application.

## **5. CONCLUSION**

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49. Based on the foregoing, it is the view of the Proposed Receiver that the Proposed Transaction will likely result in enhanced realizations on the assets of Bearstone as compared to likely realizations that would be recovered if the Proposed Transaction did not occur.

This Report is respectfully submitted this 17<sup>th</sup> day of July, 2019

**KPMG Inc.**

**In its capacity as Proposed Receiver of  
Bearstone Environmental Solutions Inc.  
and not in its personal or corporate capacity**



Per: Neil Honess  
*Senior Vice President*

**APPENDIX “A”**

**KPMG Inc. Consent to Act as Receiver**

COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF(S)

NATIONS FUND I, LLC

DEFENDANT(S)

BEARSTONE ENVIRONMENTAL SOLUTIONS INC.

DOCUMENT

**CONSENT TO ACT AS RECEIVER AND MANAGER**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Bennett Jones LLP  
4500 Bankers Hall East  
855 - 2nd Street SW  
Calgary, AB, T2P 4K7  
Phone: 403.298.3317  
Fax: 403.265.7219

Attention: Kenneth T. Lenz

**TAKE NOTICE THAT** KPMG Inc. hereby consents to being appointed as receiver and manager pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, over all present and after acquired property of every nature and kind whatsoever, and wherever situated, including all proceeds thereof of BearStone Environmental Solutions Inc.

**DATED** at Calgary, Alberta and effective this 10<sup>th</sup> day of June, 2019

**KPMG INC.**

Per: \_\_\_\_\_

  
Neil Honess  
Senior Vice President

**APPENDIX “B”**

**Asset Purchase and Sale Agreement**

**BEARSTONE ENVIRONMENTAL SOLUTIONS INC.**

**and**

**SILVERPOINT ENERGY SERVICES INC.**

**and**

**NEW WEST ENERGY SERVICES INC.**

**and**

**NATIONS FUND I, LLC**

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**ASSET PURCHASE AND SALE AGREEMENT**

**JULY 16, 2019**

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Schedule "A"	Purchased Assets
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Schedule "C"	Form of Bill of Sale and General Conveyance
Schedule "D"	Term Loan and Security Agreement
Schedule "E"	Revolving Term Loan and Security Agreement
Schedule "F"	Promissory Notes
Schedule "G"	Guarantees
Schedule "H"	Termination of Existing Guarantees
Schedule "I"	Acknowledgement of Reduction of Debt



## ASSET PURCHASE AND SALE AGREEMENT

**THIS ASSET PURCHASE AND SALE AGREEMENT** is made as of the 16th day of July 2019.

### **BETWEEN:**

**BEARSTONE ENVIRONMENTAL SOLUTIONS INC.**

(herein referred to as or the “**Vendor**”)

- and -

**SILVERPOINT ENERGY SERVICES INC.**

(hereinafter referred to as the “**Purchaser**”)

- and -

**NEW WEST ENERGY SERVICES INC.**

(hereinafter referred to as the “**Guarantor**”)

- and -

**NATIONS FUND I, LLC**

(hereinafter referred to as the “**Lender**”)

### **WHEREAS:**

- A. the Vendor is insolvent and unable to meet its obligations as they become due;
- B. it is anticipated that a Receiver may be appointed over the assets and undertakings of the Vendor, who will adopt this Agreement on behalf of the Vendor and complete it according to its terms. Pursuant to an anticipated Receivership Order, the Receiver will be appointed as receiver and manager of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, of the Vendor;
- C. the Purchaser, subject to Court Approval, has agreed to purchase and acquire and the Vendor has agreed to sell, transfer and assign to the Purchaser, all of the right, title and interest of the Vendor to the Purchased Assets, on the terms and conditions set forth herein;
- D. the Lender has a first secured charge over the assets of the Vendor and wishes to facilitate this transaction by consenting to the sale of the Purchased Assets by the Vendor and the purchase of the Purchased Assets by the Purchaser by financing the acquisition by the Purchaser and providing ongoing financing to the Purchaser to operate a business with the Purchased Assets;
- E. the Vendor and Purchaser are each wholly-owned subsidiaries of the Guarantor. The Guarantor has provided a guarantee of the obligations of the Vendor to the Lender and, upon the closing of the transactions contemplated herein, has agreed to provide a guarantee of the obligations of the Purchaser to the Lender whereupon the existing guarantees would be terminated; and

- F. the Purchaser intends at Closing to provide offers of employment or engagement to substantially all of the employees and contractors of the Vendor related to the Business.

**NOW THEREFORE** this Agreement witnesses that in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party to the other, the Parties agree as follows.

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement the following words and terms shall have the meaning set forth below:

- (a) **“Affiliate”** means, with respect to any Person, any other Person or group of Persons acting in concert, directly or indirectly, that controls, is controlled by or is under common control with such Person and the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through ownership of more than fifty (50%) percent of the voting securities of such Person, through being the general partner or trustee of the other Person, or through contract or otherwise;
- (b) **“Agreement”** means this asset purchase and sale agreement and all Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof;
- (c) **“Approval and Vesting Order”** shall mean an order of the Court: (i) approving the Transaction contemplated by this Agreement; (ii) authorizing the Vendor to perform this Agreement; (iii) vesting and assigning all right, title and interest of the Vendor in and to the Purchased Assets to the Purchaser free and clear of all Claims (other than Permitted Encumbrances) and assigning all rights, title and interest of the Vendor in the Purchased Assets to the Purchaser, in a form acceptable to the Vendor and the Purchaser;
- (d) **“Applicable Law”** means, in respect of any Person, assets, transaction, event or circumstance:
  - (i) statutes (including regulations enacted thereunder);
  - (ii) judgments, decrees and orders of courts of competent jurisdiction;
  - (iii) regulations, orders, ordinances and directives issued by Government Authorities; and
  - (iv) the terms and conditions of all permits, licenses, approvals and authorizations;
 which are applicable to such Person, asset, transaction, event or circumstance;
- (e) **“Applicable Privacy Law”** means all Applicable Law relating to privacy and the collection, use and disclosure of Personal Information in all applicable jurisdictions, including the *Personal Information Protection and Electronic Documents Act* (Canada),

and/or any comparable provincial law such as the *Personal Information Protection Act* (Alberta);

- (f) **“Books and Records”** means all of the Vendor’s books and records in its possession at the Closing Date relating to the Purchased Assets, including, without limitation, all technical and business records, all contracts, licenses, approvals, warranties, manuals, accounting records, copies of insurance policies (excluding copies of insurance policies relating to directors’ and officers’ insurance), maintenance and usage logs related to the Purchased Assets, all programs and procedures related to the maintenance, usage or operations of the Purchased Assets;
- (g) **“Business Day”** means a day other than a Saturday, Sunday or any other day on which the principal chartered banks located in Calgary, Alberta are not open for the transaction of domestic business during normal banking hours;
- (h) **“Claim”** means any right or claim of any person that may be asserted or made, in whole or in part, against the Vendor and their respective directors, officers, employees, agents or advisors, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada) had the Vendor become bankrupt;
- (i) **“Closing”** means the completion of the purchase by the Purchaser and sale by the Vendor of all right, title, estate and interest of Vendor in and to the Purchased Assets and the completion of all other transactions contemplated by this Agreement that are to occur contemporaneously with such sale, all subject to and in accordance with the terms and conditions of this Agreement;
- (j) **“Closing Date”** means: (i) July 30, 2019; and (ii) such other Business Day as the Parties may agree in writing;
- (k) **“Court”** means the Court of Queen’s Bench of Alberta, in the Judicial District of Calgary, Alberta;
- (l) **“Court Approval”** means the approval of the Transaction by the Court pursuant to the Approval and Vesting Order;

- (m) “**Delivery Locations**” mean the locations specified for delivery of the Purchased Assets as set forth in Section 6.2 hereof;
- (n) “**Effective Time**” means 12:01 a.m. (Calgary time) on the Closing Date;
- (o) “**Encumbrances**” means any liens, security interests, encumbrances, claims, charges, mortgages, adverse Claims, options or other pre-emptive interests or rights;
- (p) “**Final Order**” means an order of the Court that has not been vacated, stayed, set aside, amended, reversed, annulled or modified, as to which no appeal or application for leave to appeal therefrom has been filed and the applicable appeal period with respect thereto shall have expired without the filing of any appeal or application for leave to appeal, or if any appeal(s) or application(s) for leave to appeal therefrom have been filed, any (and all) such appeal(s) or application(s) have been dismissed, quashed, determined, withdrawn or disposed of with no further right of appeal and all opportunities for rehearing, reargument, petition for certiorari and appeal being exhausted or having expired without any appeal, motion or petition having been filed and remaining pending, any requests for rehearing have been denied, and no order having been entered and remaining pending staying, enjoining, setting aside, annulling, reversing, remanding, or superseding the same, and all conditions to effectiveness prescribed therein or otherwise by Applicable Law or order having been satisfied;
- (q) “**General Conveyance**” means a bill of sale and general conveyance, substantially in the form attached hereto as Schedule “C”, evidencing the conveyance to the Purchaser of the Vendor’s right, title and interest in and to the Purchased Assets. The Purchaser may designate to Silverpoint Energy Services Inc. as the party to whom such General Conveyance shall be made and provide such conveyance to the Purchaser’s Solicitor;
- (r) “**Governmental Authority**” means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board, court (including the Court) or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government, having jurisdiction over a Party, the Purchased Assets or the Transaction;
- (s) “**GST**” means taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder; and “**GST Legislation**” means such act and regulations collectively;
- (t) “**Income Tax Act**” means, collectively, the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supplement), the *Income Tax Application Rules*, R.S.C. 1985, c.2 (5th Supplement) and the *Income Tax Regulations*, in each case as amended to the date hereof;
- (u) “**Parties**” means, collectively, the Purchaser and the Vendor, and “**Party**” means any one of them;

- (v) **“Permitted Encumbrances”** means any Encumbrances permitted by an order of the Court;
- (w) **“Person”** means any individual, corporation, limited or unlimited liability company, joint venture, partnership (limited or general), trust, trustee, executor, Governmental Authority or other entity however designated or instituted;
- (x) **“Personal Information”** means information about an identifiable natural Person, but does not include the business contact information when such information is used to contact such natural Person as a representative of a business or the name, title, business address or telephone number of an employee of the Vendor, that is to be disclosed to the Purchaser at Closing or that was disclosed to the Purchaser to permit the Purchaser to carry out its due diligence in connection with the Transaction;
- (y) **“Purchased Assets”** means the property described in Schedule “A”.
- (z) **“Purchaser’s Solicitors”** means the law firm of Osler, Hoskin & Harcourt LLP, or such other firm or firms of solicitors as are appointed by the Purchaser from time to time and notice of which is provided to the other Parties;
- (aa) **“Receiver”** means KPMG Inc. in its capacity as the anticipated Court-appointed receiver and manager of the Vendor in the Receivership Proceedings and not in its personal capacity;
- (bb) **“Receivership Order”** means the anticipated order of the Alberta Court, pursuant to which the Receiver will be appointed as the receiver and manager of all of the current and future assets, undertaking and properties of every nature or kind whatsoever and wheresoever situate, of the Vendor;
- (cc) **“Receivership Proceedings”** means the court proceedings brought in the Alberta Court;
- (dd) **“Representative”** means, in respect of a Person, each director, officer, employee, agent, legal counsel, accountant, professional advisor and other representative of such person and its Affiliates, and with respect to the Vendor, includes the directors, officers, employees, agents, legal counsel, accountants, professional advisors and other representatives;
- (ee) **“Specific Conveyances”** means all conveyances, bills of sale, assignments, transfers, and other documents or instruments that are reasonably required or desirable to convey, assign and transfer the Vendor’s interest in and to the Purchased Assets to the Purchaser including:
  - (i) a bill of sale for each item forming part of the Purchased Assets; and
  - (ii) the Purchaser may designate in writing Silverpoint Energy Services Inc. as the party to whom a Specific Conveyance shall be made, and provide such conveyance to the Purchaser’s Solicitor;
- (ff) **“Tax Legislation”** means, collectively, the Income Tax Act, all Canadian federal, provincial, territorial, county, municipal and local, foreign, or other statutes, ordinances

or regulations imposing a Tax, including all treaties, conventions, rules, regulations, orders, and decrees of any jurisdiction;

- (gg) **“Tax”** or **“Taxes”** means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Authority under any applicable Tax Legislation, including, Canadian and federal, provincial, territorial, county, municipal and local, foreign or other income, capital, capital gains, goods and services, sales, use, consumption, excise, value added (including GST, Harmonized Sales Tax and provincial and retail sales taxes), business, real property, personal property, transfer, franchise, withholding, payroll, or employer health taxes, customs, import, anti-dumping or countervailing duties, Canada Pension Plan contributions, Employment Insurance premiums, and provincial workers’ compensation payments, levy, assessment, tariff, impost, imposition, toll and duty, whether computed on a separate, combined, unitary, or consolidated basis or any other manner, including any interest, penalties and fines associated therewith;
- (hh) **“Third Party”** means any person who is not a Party, Affiliate or Representative;
- (ii) **“Third Party Claim”** means any Claim by a Third Party asserted against the Vendor for which the Purchaser has indemnified the Vendor or is otherwise responsible for pursuant to this Agreement;
- (jj) **“Time of Closing”** means 2:00 p.m. (Calgary, Alberta time) on the Closing Date or such other date and time as the Parties may agree in writing that the Closing shall take place;
- (kk) **“Transaction”** means the transaction for the purchase and sale of the Purchased Assets as contemplated in this Agreement;
- (ll) **“Transaction Personal Information”** means any Personal Information in the possession, custody or control of the Vendor including Personal Information about employees, suppliers, customers, directors, officers or shareholders of the Vendor that is:
  - (i) disclosed to the Purchaser or its Representatives before the Effective Time by the Vendor, its Representatives, or otherwise; or
  - (ii) collected by the Purchaser or its Representatives before the Effective Time from the Vendor, its Representatives, or otherwise;
 in each case in connection with the Transaction; and
- (mm) **“Transfer Taxes”** means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including GST and harmonized sales tax and, for greater certainty, not including income taxes.

## 1.2 Interpretation

The following rules of construction shall apply to this Agreement unless the context otherwise requires:

- (a) all references to monetary amounts, unless indicated to the contrary, are to the lawful currency of Canada and all references to cash are references to any form of immediately available funds by way of wire transfer, certified cheque or bank draft;
- (b) words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders;
- (c) the word “include” and derivatives thereof shall be read as if followed by the phrase “without limitation”;
- (d) the words “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to this Agreement and not to any particular provision of this Agreement;
- (e) the headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation hereof;
- (f) reference to any Article, Section or Schedule means an Article, Section or Schedule of this Agreement unless otherwise specified;
- (g) if any provision of a Schedule hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict;
- (h) all documents executed and delivered pursuant to the provisions of this Agreement are subordinate to the provisions hereof and the provisions hereof shall govern and prevail in the event of a conflict; and
- (i) this Agreement has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party does not apply to the construction or interpretation of this Agreement.

### **1.3 Schedules**

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule “A”	Purchased Assets
Schedule “B”	Form of Purchaser’s Officer’s Certificate
Schedule “C”	Form of Bill of Sale and General Conveyance
Schedule “D”	Term Loan and Security Agreement
Schedule “E”	Revolving Term Loan and Security Agreement
Schedule “F”	Promissory Notes
Schedule “G”	Guarantees
Schedule “H”	Termination of Existing Guarantees
Schedule “I”	Acknowledgement of Reduction of Debt

#### **1.4 Interpretation if Closing Does Not Occur**

If Closing does not occur, each provision of this Agreement which presumes that the Purchaser has acquired the Purchased Assets shall be construed as having been contingent upon Closing having occurred.

### **ARTICLE 2 PURCHASE AND SALE OF PURCHASED ASSETS**

#### **2.1 Agreement of Purchase and Sale**

Subject to the terms and conditions of this Agreement and effective as of the Effective Time, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase, accept and receive from the Vendor, all of the Vendor's right, title and interest in and to Purchased Assets as herein provided, in each case free and clear of all Encumbrances and Claims (other than Permitted Encumbrances) on the following basis on the terms set out herein.

#### **2.2 Transfer of Purchased Assets**

Provided that Closing occurs and subject to the terms and conditions of this Agreement, possession, risk and beneficial ownership of the Purchased Assets shall transfer from the Vendor to the Purchaser on the Closing Date effective as of the Effective Time.

### **ARTICLE 3 CONSIDERATION**

#### **3.1 Consideration for Purchased Assets**

As consideration for the Vendor selling, assigning, transferring and conveying to the Purchaser the Purchased Assets, the adequacy and propriety of which is acknowledged by the Parties, the Purchaser shall at Closing assume \$2,733,911 of the Vendor's current secured indebtedness to the Lender and the Lender shall discharge the Vendor of such amount owing from the Vendor to the Lender. Such assumption of indebtedness shall be subject to adjustment pursuant to Section 3.3.

#### **3.2 Deemed Purchase Price**

The purchase price for the Purchased Assets shall be deemed to be \$2,733,911 (the "**Purchase Price**") and allocated in accordance with Schedule "A" and the same shall at Closing be deemed to be paid by the Purchasers to the Vendor and satisfied. For greater certainty, the Purchase Price shall not be subject to the adjustment described in Section 3.3 and Section 3.3 shall in no way impact the Purchase Price.

#### **3.3 Adjustment of Indebtedness**

The Purchaser's indebtedness to the Lender in the amount of \$2,733,911 pursuant to Section 3.1 shall, on the day that is six months from the Closing Date, be adjusted and reduced by the amount of funds subsequently received by the Receiver:

- (a) in excess of \$1,710,000 (not to be reduced by any sales commissions or other expenses) associated with the sale of assets remaining with the Vendor; and



- (b) in excess of \$1,095,291 associated with the collection of the Vendor's accounts receivable.

### **3.4 Loan for Payment of Back Wages and Fees**

The Purchaser intends at Closing to provide offers of employment or engagement to substantially all of the employees and contractors of the Vendor related to the Business and covenants in respect of each such employee and contractor hired or engaged by the Purchaser to pay all back wages and fees owing by the Vendor to each such person. To facilitate such payments by the Purchaser, the Lender shall at Closing lend to the Purchaser \$315,000 (the "**Employee Loan**").

### **3.5 Financing**

At Closing, to among other things facilitate the financing of the amounts to be owing by the Purchaser to the Lender pursuant to Section 3.1, and to facilitate the Employee Loan, the Purchaser, Lender and Guarantor, as applicable, will enter into and deliver executed copies of the following documents:

- (a) the Term Loan and Security Agreement, appended to this Agreement as Schedule "D";
- (b) the Revolving Term Loan and Security Agreement, appended to this Agreement as Schedule "E";
- (c) Promissory Notes, appended to this Agreement as Schedule "F";
- (d) Guarantees, appended to this Agreement as Schedule "G".

### **3.6 Transfer Taxes**

The Parties agree that:

- (a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets or the registration of any Specific Conveyances necessitated hereby;
- (b) where the Vendor is required under Applicable Law to collect or pay Transfer Taxes, the Purchaser will pay the amount of such Transfer Taxes to the Vendor at Closing upon which Vendor shall remit such Transfer Taxes to the appropriate Governmental Authority as soon after Closing as is practicable and in compliance with the applicable Tax Legislation and provide proof of such payment to Purchaser;
- (c) except where the Vendor is required under Applicable Law to collect or pay such Transfer Taxes, the Purchaser shall pay such Transfer Taxes directly to the appropriate Governmental Authority or other entity within the required time period and shall file all necessary documentation with respect to such Transfer Taxes when due and the Vendor will do and cause to be done such things as are reasonably requested to enable the Purchaser to comply with such obligation in a timely manner or if the Vendor is required under Applicable Law to pay any such Transfer Taxes, the Purchaser shall promptly reimburse the Vendor the full amount of such Transfer Taxes upon delivery to the Purchaser of copies of receipts showing payment of such Transfer Taxes;

- (d) the Purchaser shall indemnify the Vendor for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendor may pay or for which the Vendor may become liable as a result of any failure or delay by the Purchaser to pay or remit such Transfer Taxes; and
- (e) to the extent permitted under section 156 of Part IX of the *Excise Tax Act* (Canada), and any equivalent or corresponding provision under any applicable provincial or territorial legislation imposing a similar value added or multi-staged tax, the Purchaser and the Vendor shall jointly elect prior to Closing, that all supplies made between them at a time when the election is in effect shall be deemed to be made for nil consideration, such that no GST should apply to the transfer of the Purchased Assets.

#### **ARTICLE 4 ADJUSTMENTS**

##### **4.1 Adjustments**

- (a) If it is determined, pursuant to an inventory of the Purchased Assets completed jointly by the Parties on or prior to Closing, that certain assets forming part of the Purchased Assets included in the Purchased Assets as described in Schedule "A" are not available to form part of the Transaction as at the Closing Date, then the Purchase Price allocated to such item of Purchased Assets shall be reduced based on the value apportioned to such item of Purchased Assets in Schedule "A".
- (b) For the purposes of Section 4.1(a) a Purchased Asset will be "available" if it is: (A) located at the Delivery Locations or such other location as may have been agreed upon by the Parties pursuant to Section 6.2; and (B) fit for use (subject to depreciation for age of use and excluding any required repairs in the ordinary course of business or other wear and tear in the ordinary course), provided that if the Parties are unable to agree to whether an item is "fit for use" in accordance with this Section, such determination will be made by a Third Party appraiser appointed to be agreed to between the Parties.

#### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

##### **5.1 Vendor's Representations and Warranties**

The Vendor hereby represents and warrants to the Purchaser and Lender that:

- (a) the Vendor consents to the appointment of the Receiver;
- (b) provided that Court Approval is obtained, this Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding obligation of the Vendor and is enforceable against the Vendor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar Applicable Laws relating to creditors' rights generally and subject to general principles of equity; and
- (c) the Vendor is a resident of Canada for the purposes of the Income Tax Act.

## 5.2 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants to the Vendor and Lender that:

- (a) the Purchaser is a corporation duly incorporated and validly subsisting under the laws of the jurisdiction of its incorporation and has the requisite power and authority to enter into this Agreement and to complete the Transaction;
- (b) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement;
- (c) provided that the Court Approval is obtained, execution, delivery and performance of this Agreement by the Purchaser does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or materially delay the consummation by the Purchaser of the Transaction;
- (d) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar Applicable Laws relating to creditors' rights generally and subject to general principles of equity;
- (e) there is no requirement for the Purchaser to make any filing with, give any notice to, or obtain any authorization of, any Governmental Authority pursuant to the *Competition Act* (Canada), as a result of, in connection with, or as a condition to the lawful completion of the Transaction; and
- (f) the Purchaser is not a non-Canadian person within the meaning of the *Investment Canada Act* nor a non-resident for the purposes of the Income Tax Act.

## 5.3 Enforcement of Representations and Warranties

- (a) The representations and warranties of each Party contained in this Agreement shall survive until Closing and shall thereafter be of no further force and effect. Effective upon the occurrence of Closing, each Party hereby releases and forever discharges each other Party from any breach of any representations and warranties set forth in this Agreement.
- (b) The representations and warranties of the Vendor made herein or pursuant hereto are made for the exclusive benefit of the Purchaser and Lender, and the representations and warranties of the Purchaser made herein or pursuant hereto are made for the exclusive benefit of the Vendor and Lender, as the case may be, and are not transferable and may not be made the subject of any right of subrogation in favour of any other person.
- (c) The Parties expressly acknowledge and agree that the provisions of this Section 5.3 and the limit on each Party's liability set out in this Section 5.3 are intended by the Parties as a limitation of liability that represents a fair and equitable allocation of the risks and liabilities that each Party has agreed to assume in connection with the subject matter hereof and is not an agreement within the provision of subsection 7(2) of the *Limitations Act* (Alberta).

#### 5.4 Purchase of Assets and Additional Representations and Warranties

- (a) The Purchaser acknowledges and agrees that it is acquiring the Purchased Assets on an “as is, where is” and “without recourse” basis, and that neither the Vendor nor any of its Representatives make any representations or warranties of any kind whatsoever, express or implied, and in particular, and without limiting the generality of the foregoing, the Vendor expressly negates and disclaims, and neither the Vendor nor any of its Representatives shall be liable for, any representation or warranty which may have been made or alleged to be made in any instrument or document related hereto, or in any statement or information made or communicated (in writing or orally) to the Purchaser or its Representatives in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Vendor or any of its Representatives in connection with the Purchased Assets. For greater certainty, neither the Vendor nor any of their Representatives make any condition, representation or warranty whatsoever, express or implied, with respect to:
- (i) the merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, Environmental condition, existence of latent defects, quality, quantity or any other thing affecting any of the Purchased Assets;
  - (ii) any data or written or oral information supplied by the Vendor or any of its Representatives in connection with the Purchased Assets, including by way of management presentations, site visits and diligence meetings or telephone calls or otherwise;
  - (iii) the value of any of the Purchased Assets or the future cash flow therefrom;
  - (iv) any regulatory approvals, licenses, consents or authorizations that may be needed to complete the Transaction contemplated by this Agreement or to operate or carry on the business or any portion thereof in respect of the Purchased Assets; or
  - (v) the quality, condition, description, fitness for purpose, suitability, serviceability or merchantability of the Purchased Assets or any other tangible, depreciable equipment or property forming part of the Purchased Assets.

Notwithstanding the as-is, where-is (and without recourse) nature of the Transaction, nothing set forth in this Section 5.4(a) shall relieve the Purchaser of its right to an adjustment to the Purchase Price in respect of damaged or missing Purchased Assets.

- (b) The Purchaser hereby acknowledges and confirms that it is satisfied with its due diligence investigations with respect to the Purchased Assets and hereby acknowledges and confirms that it is relying solely on its own investigations concerning the Purchased Assets, and it has not relied on any advice from the Vendor or any of its Representatives with respect thereto, including with respect to the matters specifically enumerated in Section 5.4(a) in connection with the purchase of the Purchased Assets.
- (c) Any information regarding or describing the Purchased Assets in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by the

Vendor or any its Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions.

- (d) Except for its rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including all common law, tort, contractual and statutory rights and remedies) against the Vendor and its Representatives in respect of the Purchased Assets and any representations or statements made or information or data furnished to the Purchaser or its Representatives in connection herewith (whether made or furnished orally or by electronic, faxed, written or other means). Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in the *Sale of Goods Act* (Alberta) (or similar applicable statutes), warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights.
- (e) None of representations and warranties contained in this Article 5 shall survive Closing and, other than in the case of fraud, the Purchaser's sole recourse for any material breach of representation or warranty in this Article 5 shall be for the Purchaser to not complete the transactions in accordance with Sections 7.1, 7.1 and 7.2 of this Agreement.

## **ARTICLE 6 COVENANTS**

### **6.1 Maintenance of Purchased Assets Until Closing**

From the date hereof and Until the Closing Date, subject to the Receivership Order, the Vendor shall:

- (a) cause the Purchased Assets to be maintained in accordance with generally accepted industry practices;
- (b) not, directly or indirectly, do or permit to occur any of the following:
  - (i) sell, lease, assign, transfer, abandon or otherwise dispose of any of the Purchased Assets;
  - (ii) agree to assume any new obligation or commitment respecting the Purchased Assets, if the result is an Encumbrance against the Purchased Assets in excess of \$10,000;
- (c) use reasonable commercial efforts to cooperate with the Receiver in its preparation and application for the Court Approval.

### **6.2 Possession of Purchased Assets and Expenses for Removal**

If the Closing occurs, the Purchaser shall be responsible for and shall take possession of the Purchased Assets at the location where the assets are presently situated (the "**Delivery Location(s)**").

### **6.3 Personal Information**

- (a) The Parties shall at all times, use and disclose the Personal Information under their or its control solely for the purposes for which the Personal Information was collected or permitted to be used or disclosed, unless to the extent required by Applicable Law, a Party, as the case may be, has obtained the consent of or has given notice to the individual to whom the Personal Information relates of the additional purposes for which the Personal Information is to be used or disclosed, or such additional purposes are permitted or authorized by Applicable Law;
- (b) protect the Personal Information using security safeguards that meet or exceed industry standards, taking into account the sensitivity of the Personal Information; and
- (c) give effect to any withdrawal of consent by the individual to whom the Personal Information relates where the Personal Information was collected with consent.

### **6.4 Privacy Laws**

- (a) Each Party shall, and shall ensure that its Representatives shall, comply with Applicable Privacy Law in the course of their collection, use and disclosure of Transaction Personal Information pursuant to this Agreement.
- (b) Each Party agrees that the collection, use and disclosure of Transaction Personal Information is necessary for the purposes of determining if the Parties will proceed with the Transaction and completing the Transaction.
- (c) The Purchaser shall, and shall ensure that its Representatives shall, not use Transaction Personal Information for any purposes other than those related to evaluation of the Transaction and/or the completion of the Transaction.
- (d) If the Transaction proceeds, neither the Purchaser nor any of its Representatives shall, after Closing, without the consent of the individuals to whom such Personal Information relates, or as otherwise permitted or required by Applicable Law, use or disclose Transaction Personal Information for purposes other than those for which such Transaction Personal Information was originally collected prior to Closing.
- (e) In the event of the successful completion of the Transaction, the Purchaser, if and only to the extent required by Applicable Privacy Law that governs the Personal Information of individuals whose Personal Information has become Transaction Personal Information, shall notify such individuals that a business transaction has taken place and that their Personal Information was disclosed by the Vendor to the Purchaser for the purposes of this Agreement.
- (f) If this Agreement is terminated as provided herein, the Purchaser shall promptly deliver to the Vendor all Transaction Personal Information in its possession or in the possession of its Representatives, including all copies, reproductions, summaries or extracts thereof.
- (g) The Purchaser shall use all reasonable efforts to protect and safeguard the Transaction Personal Information including, without limitation, to protect the Transaction Personal Information from loss or theft, or unauthorized access disclosure, copying, use, modification, disposal or destruction and promptly advise the Vendor should any such

loss, theft or unauthorized activity occur prior to the completion of the transactions contemplated herein.

## **ARTICLE 7 CONDITIONS OF CLOSING**

### **7.1 Mutual Conditions**

The respective obligations of the Parties to complete the Transaction are subject to the following conditions being fulfilled or performed as at or prior to the Time of Closing:

- (a) The Receiver has been appointed as receiver of the assets and undertaking of the Vendor, and that the Receiver adopts this Agreement in that capacity;
- (b) the Court has granted the Approval and Vesting Order;
- (c) all necessary waivers, consents and/or approvals of Governmental Authority, if any, for completion of the Transaction has been obtained;
- (d) no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or law which has the effect of: (i) making any of the transactions contemplated by this Agreement illegal; or (ii) otherwise prohibiting, preventing or restraining the consummation the Transaction; and
- (e) the Closing is not otherwise prohibited by Applicable Law.

The foregoing conditions are for the mutual benefit of the Parties and may be asserted by any Party regardless of the circumstances and may be waived only with the written agreement of all Parties.

### **7.2 Conditions for the Benefit of the Purchaser**

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed as at or prior to the Time of Closing:

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true and correct in all material respects as at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Vendor has complied with and performed, in all material respects, all of its covenants and obligations contained in this Agreement; and
- (c) the Vendor, Lender and Guarantor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Sections 8.2, 8.4 and 8.5, respectively, hereof.

The foregoing conditions are for the exclusive benefit of the Purchaser and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Purchaser may have. If any of the said conditions have not been complied with or waived by the Purchaser at or before the Time of Closing, the Purchaser may terminate this Agreement by written notice to the other Parties.

### **7.3 Conditions for the Benefit of the Vendor**

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed as at or prior to the Time of Closing:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects as at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Purchaser has complied with and performed in all material respects all of its covenants and obligations contained in this Agreement;
- (c) the Purchaser, Lender and Guarantor shall have and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Sections 8.3, 8.4 and 8.5, respectfully, hereof.

The foregoing conditions are for the exclusive benefit of the Vendor and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Vendor may have. If any of the said conditions have not been complied with or waived by the Vendor at or before the Time of Closing, the Vendor may terminate this Agreement by written notice to the other Parties.

### **7.4 Conditions for Benefit by Lender**

The obligation of the Lender to complete the Transaction is subject to the Vendor, Purchaser and Guarantor having delivered at the Time of Closing duly executed copies of the documents contemplated in Sections 8.2, 8.3, and 8.5, respectfully, hereof.

The foregoing conditions are for the exclusive benefit of the Lender and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Lender may have. If any of the said conditions have not been complied with or waived by the Lender at or before the Time of Closing, the Lender may terminate this Agreement by written notice to the other Parties.

### **7.5 Conditions for the Benefit of the Guarantor**

The obligation of the Guarantor to complete the Transaction is subject to the Vendor, Purchaser and Lender having delivered at the Time of Closing duly executed copies of the documents contemplated in Sections 8.2, 8.3, and 8.4, respectfully, hereof.

The foregoing conditions are for the exclusive benefit of the Guarantor and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Guarantor may have. If any of the said conditions have not been complied with or waived by the Guarantor at or before the Time of Closing, the Guarantor may terminate this Agreement by written notice to the other Parties.

### **7.6 Satisfaction of Conditions**

Each of the Parties shall proceed diligently and in good faith and use all commercially reasonable efforts to fulfill and assist in the fulfillment of the conditions set forth in Sections 7.1, 7.2, 7.3, 7.4 and 7.5. In addition, each of the Parties agrees not take any action that could reasonably be expected to preclude,



delay or have an adverse effect on the Transaction or would render, or may reasonably be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect.

## **ARTICLE 8 CLOSING**

### **8.1 Closing Date and Place of Closing**

Subject to the conditions set out in this Agreement, the Transaction shall close and be completed on the Closing Date. The completion of the Transaction shall take place at the Time of Closing at the offices of the Purchaser's Solicitors, or at such other time or such other location as the Parties may agree in writing.

### **8.2 Deliveries on Closing by the Vendor**

The Vendor shall deliver at the Time of Closing:

- (a) to the Purchaser:
  - (i) duly executed copies of Schedules "C" and "I";
  - (ii) any Specific Conveyances, requested by the Purchaser, acting reasonably, each in form and substance satisfactory to the Parties, acting reasonably, as executed by the Vendor;
- (b) to the Purchaser, Lender and Guarantor, such other documents as are referred to in this Agreement or as the Purchaser, Lender or Guarantor may reasonably require to give effect to this Agreement.

### **8.3 Deliveries on Closing by the Purchaser**

The Purchaser shall deliver at the Time of Closing:

- (a) to the Vendor duly executed copy of Schedule "B";
- (b) to the Lender duly executed copies of Schedules "D", "E" and "F"; and
- (c) to the Vender, Lender and Guarantor, such other documents as are referred to in this Agreement or as the Vender, Lender or Guarantor may reasonably require to give effect to this Agreement.

### **8.4 Deliveries on Closing by the Lender**

The Lender shall deliver at the Time of Closing:

- (a) to the Purchaser duly executed copies of Schedules "D", "E" and "I" of this Agreement;
- (b) to the Guarantor duly executed copies of Schedules "G" and "H"; and
- (c) to the Vendor, Purchaser and Guarantor such other documents as are referred to in this Agreement or as the Vender, Purchaser or Guarantor may reasonably require to give effect to this Agreement.

## 8.5 Deliveries on Closing by the Guarantor

The Guarantor shall deliver at the Time of Closing:

- (a) to the Lender a duly executed copy of Schedule “G”; and
- (b) to the Vendor, Purchaser and Lender such other documents as are referred to in this Agreement or as the Vender, Purchaser or Lender may reasonably require to give effect to this Agreement.

## 8.6 Risk and Insurance

The risk of loss of the Purchased Assets shall remain with the Vendor until Closing. Upon Closing, all title and risk in respect to the Purchased Assets shall pass to the Purchaser effective as of the Effective Time. Any property, liability and other insurance maintained by the Vendor shall not be transferred as of the Time of Closing, but shall remain the responsibility of the Vendor until the Time of Closing. The Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Purchased Assets in respect of the period from and after the Time of Closing.

## ARTICLE 9 INDEMNITY

### 9.1 Indemnification Given by Purchaser

If Closing occurs, the Purchaser shall:

- (a) be liable to the Vendor for; and
- (b) as a separate covenant, indemnify the Vendor and its Representatives from and against;

all Losses and Liabilities suffered, sustained, paid or incurred by any of them to the extent arising or accruing on or after the Effective Time and which relate to the Purchased Assets, including all Losses and Liabilities attributable to the ownership, operation, use, construction or maintenance of the Purchased Assets arising or accruing on or after the Effective Time. The Purchaser’s indemnity obligation set forth in this Section 9.1 shall survive the Closing Date indefinitely.

### 9.2 Third Party Claims

- (a) If the Vendor receives notice of the commencement or assertion of any Third Party Claim for which the Purchaser may be liable pursuant to this Agreement, the Vendor shall give the Purchaser reasonably prompt notice thereof, but in any event no later than fourteen (14) days after receipt of such notice of such Third Party Claim. Such notice to the Purchaser shall describe the Third Party Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount (or the method of computation of the amount) of the Loss that has been or may be sustained by the Vendor, and a reference to the provisions of this Agreement upon which such claim is based.
- (b) The Purchaser may participate in the defence of any Third Party Claim by giving notice to that effect to the Vendor not later than fourteen (14) days after receiving notice of that Third Party Claim (the “**Notice Period**”) so long as: (i) the Purchaser first acknowledges to the Vendor, in writing, liability to the Vendor under this Agreement with respect to

such Third Party Claim and that the outcome of such Third Party Claim does not alter or diminish the Purchaser's obligation to indemnify the Vendor pursuant to this Agreement, subject to the Purchaser's right to contest in good faith the Third Party Claim; (ii) the Purchaser has the financial resources to defend against the Third Party Claim and fulfill any indemnification obligations and has provided the Vendor with evidence thereof; and (iii) the Purchaser participates in the defence of the Third Party Claim actively and diligently. The Purchaser's right to do so shall be subject to the rights of any insurer or other third party who has potential liability in respect of that Third Party Claim. The Purchaser shall pay all of its own expenses of participating in or assuming such defence. The Vendor shall cooperate in good faith in the defence of each Third Party Claim and may participate in such defence assisted by counsel of its own choice at its own expense.

- (c) If the Vendor has not received notice within the Notice Period that the Purchaser has elected to participate in the defence of such Third Party Claim, or if the Purchaser has given such notice but thereafter fails to conduct such defence of such Third Party Claim actively and diligently, the Vendor may, at its option, elect to settle or compromise the Third Party Claim on terms of its choosing, or assume such defence assisted by counsel of its own choosing, and the Purchaser shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Vendor with respect to such Third Party Claim.

### **9.3 Failure to Give Timely Notice**

A failure to give timely notice as provided in this Article 9 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under any applicable insurance coverage or was otherwise prejudiced as a result of such failure.

### **9.4 No Merger**

There shall not be any merger of any liability or indemnity hereunder in any assignment, conveyance, transfer or document delivered pursuant hereto notwithstanding any rule of law, equity or statute to the contrary and all such rules are hereby waived.

## **ARTICLE 10 TERMINATION**

### **10.1 Termination**

This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the Parties;
- (b) by the Purchaser or Lender upon written notice to the other Parties, if the Vendor breaches any of the material obligations, covenants, representations and warranties under this Agreement, and such breach not having been cured within three (3) Business Days of written notice of such material breach being given by the Purchaser or Lender to the Parties;
- (c) by the Vendor or Lender upon written notice to the other Parties, if the Purchaser breaches any of the material obligations, covenants, representations and warranties under

this Agreement, and such breach not having been cured within three (3) Business Days of written notice of such material breach being given by the Vendor or Lender to the other Parties;

- (d) by any Party upon written notice to the other Parties if the conditions for the mutual benefit of the Parties pursuant to the provisions of Section 7.1 are not satisfied or waived by or on the Closing Date;
- (e) by the Purchaser upon written notice to the other Parties if the conditions for the benefit of the Purchaser pursuant to the provisions of Section 7.2 are not satisfied or waived by or on the Closing Date;
- (f) by the Vendor upon written notice to the other Parties if the conditions for the benefit of the Vendor pursuant to the provisions of Section 7.3 are not satisfied or waived by or on the Closing Date
- (g) by the Lender upon written notice to the other Parties if the conditions for the benefit of the Lender pursuant to the provisions of Section 7.4 are not satisfied or waived by or on the Closing Date;
- (h) by the Guarantor upon written notice to the other Parties if the conditions for the benefit of the Guarantor pursuant to the provisions of Section 7.5 are not satisfied or waived by or on the Closing Date; and
- (i) by any Party upon written notice to the other Parties if Closing does not occur on or before July 30, 2019.

## **10.2 Effect of Termination**

Notwithstanding any termination of this Agreement by the Vendor or the Purchaser as permitted under Section 10.1, the provisions of Sections 9.1, 9.2, 9.3, 10.2, 11.1, 11.4, 11.5, 11.11 and 11.14 shall remain in full force and effect following any such permitted termination of this Agreement,.

## **ARTICLE 11 MISCELLANEOUS**

### **11.1 Public Announcements**

- (a) Subject to Section 11.1(b) and 11.1(c), if a Party intends to issue a press release or other public disclosure of this Agreement, the terms hereof or the Transaction, the disclosing Party shall provide the other Party with an advance copy of any such press release or public disclosure with sufficient time to enable the other Party to review such press release or other public disclosure and provide any comments. The disclosing Party shall not issue such press release or other public disclosure without the prior written consent of the other Party, such consent not to be unreasonably withheld.
- (b) Notwithstanding Section 11.1(a): (i) this Agreement may be filed by the Vendor with the Court; and (ii) the Transaction may be disclosed by the Vendor to the Court, subject to redacting confidential/sensitive information or sealing (as mutually determined by the Purchaser and the Vendor acting reasonably) as permitted by Applicable Law and rules. The Parties further agree that:

- (i) the Vendor may prepare and file reports and other documents with the Court containing references to the Transaction and the terms of such Transaction; and
  - (ii) the Vendor and its Representatives may prepare and file such reports and other documents with the Court containing references to the Transaction contemplated by this Agreement and the terms of such Transaction as may reasonably be necessary to obtain the Court Approvals and to complete the Transaction contemplated by this Agreement or to comply with their obligations to the Court.
- (c) Notwithstanding Section 11.1(a), where public disclosure of this Agreement, the terms hereof or the Transaction is required by Applicable Law, Governmental Authority or stock exchange rules, the Party required to make the disclosure shall:
- (i) use commercially reasonable efforts to provide the other Parties with a draft of any such proposed public announcement or press release at least 24 hours prior to the proposed release thereof; and
  - (ii) to the extent reasonably possible, incorporate any reasonable amendments to the proposed public announcement or press release that one or more of the other Parties request sufficiently prior to the release thereof in order for the Party making such public announcement or press release to review and evaluate such proposed amendments.

## **11.2 Specific Conveyances**

No Specific Conveyance shall confer or impose upon a Party any greater right or obligation than contemplated in this Agreement. The Purchaser may prepare Specific Conveyances which it reasonably wishes to have executed and shall provide same to the Vendor for its review and execution in a timely fashion prior to the Time of Closing. The Purchaser shall, as applicable, register and/or distribute all Specific Conveyances and all costs and fees, including making all deposits and providing all assurances and security of every nature and kind required in connection with the distribution and registration of the Specific Conveyances and the conveyance, transfer and assignment of the Purchased Assets to the Purchaser and the recognition of the Purchaser as the holder thereof shall be for the account of the Purchaser.

## **11.3 Obligations to Survive**

With the exception of the representations and warranties of the Parties contained in Section 5.1 and 5.2 (which shall not survive the Closing of the purchase and sale of the Purchased Assets pursuant to this Agreement and shall expire and be terminated and extinguished upon Closing), notwithstanding the Closing contemplated hereunder or the delivery of documents pursuant to this Agreement, the obligations, covenants, representations and warranties of the Parties set out in this Agreement shall survive Closing, shall remain in full force and effect, shall not merge as a result of Closing and shall be binding on the Parties thereafter.

## **11.4 Governing Law**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta, and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each Party irrevocably submits to the

exclusive jurisdiction of the Court with respect to the resolution of any dispute arising from this Agreement.

- (b) Notwithstanding Section 11.4(a), any and all documents or orders that may be filed, made or entered in the Receivership Proceedings, and the rights and obligations of the Parties thereunder, including all matters of construction, validity and performance thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with the laws of the Province of Alberta without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the Court for the resolution of any such disputes, regardless of whether such disputes arose under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.12 shall be deemed effective service of process on such Party.

### **11.5 Consequential Damages**

Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any punitive, exemplary, consequential or indirect damages (including for greater certainty, any loss of profits) (collectively, “**Consequential Damages**”) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

### **11.6 Further Assurances**

Each of the Parties hereto from and after the date hereof shall, from time to time, and at the request and expense of the Party requesting the same, do all such further acts and things and execute and deliver such further instruments, documents, matters, papers and assurances as may be reasonably requested to complete the Transaction and for more effectually carrying out the true intent and meaning of this Agreement.

### **11.7 No Assignment by Purchaser**

The Purchaser shall not, without the Vendor’s prior written consent, assign any right or interest in this Agreement, which consent may be withheld in the Vendor’s sole and absolute discretion, except that the Purchaser shall have the right to assign any or all of its rights, interests or obligations hereunder to one or more Affiliates of the Purchaser, provided that such Affiliate agrees to be bound by the terms of this Agreement and provided that the Purchaser shall remain liable hereunder for any breach of the terms of this Agreement by such Affiliate. The Vendor shall not assign any right or interest in this Agreement.

### **11.8 Waiver**

No failure on the part of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by statute or otherwise conferred. No waiver by any Party of any breach (whether actual or anticipated) of any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

## 11.9 Amendment

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date hereof, executed by a duly authorized representative of each Party.

## 11.10 Time of the Essence

Time is of the essence in this Agreement.

## 11.11 Costs and Expenses

Each Party shall be responsible for all costs and expenses (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisors) incurred by it in connection with this Agreement and the Transaction.

## 11.12 Notices

Any notice, demand or other communication required or permitted to be given to any Party shall be given in writing and addressed as follows:

- (a) in the case of the Vendor, Purchaser and Guarantor:

Osler, Hoskin & Harcourt LLP  
Suite 2500, 450 1st St SW  
Calgary AB T2P 5H1

**Attention:** Randal Van de Mosselaer  
Email: [rvandemosselaer@osler.com](mailto:rvandemosselaer@osler.com)

- (b) In the case of the Lender:

Bennett Jones LLP  
4500, 855 - 2<sup>nd</sup> Street S.W.  
Calgary, AB, Canada T2P 4K7

**Attention:** Ken Lenz, Q.C.  
Email: [lenzk@bennettjones.com](mailto:lenzk@bennettjones.com)

A notice is deemed to be given and received if: (i) sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day; or (ii) sent by email, on the date of transmission if it is a Business Day and the transmission was made prior to 4:00 p.m. (local time in place of receipt), and otherwise on the next Business Day. A Party may change its address for service from time to time by providing a notice in accordance with the foregoing. Any subsequent notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a notice will be assumed not to be changed. Sending a copy of a notice to a Party's legal counsel as contemplated above constitutes delivery of the notice to that Party. The failure to send a copy of a notice to legal counsel does not invalidate delivery of that notice to a Party.

**11.13 Enurement**

This Agreement shall be binding upon, and enure to the benefit of, the Parties and their respective successors and permitted assigns.

**11.14 Severability**

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision validity or enforceability in any other jurisdiction.

**11.15 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancel and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect to the subject matter hereof. There are no conditions, covenants, agreements, representations, warranties or other provisions, whether oral or written, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof other than those contained in this Agreement.

**11.16 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic means of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

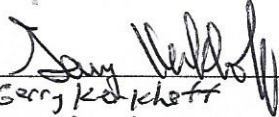
*[The balance of this page intentionally left blank]*



IN WITNESS WHEREOF this Agreement has been properly executed by the Parties as of the date first above written.

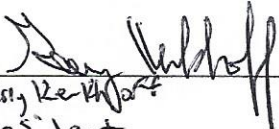
**BEARSTONE ENVIRONMENTAL SOLUTIONS INC.**

Per:

  
Name: Gerry Kerkhoff  
Title: President

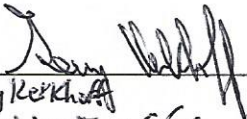
**SILVERPOINT ENERGY SERVICES INC.**

Per:

  
Name: Gerry Kerkhoff  
Title: President

**NEW WEST ENERGY SERVICES INC.**

Per:

  
Name: Gerry Kerkhoff  
Title: President & CEO

**NATIONS FUND I, LLC**

Per:

\_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF** this Agreement has been properly executed by the Parties as of the date first above written.

**BEARSTONE ENVIRONMENTAL SOLUTIONS INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

**SILVERPOINT ENERGY SERVICES INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

**NEW WEST ENERGY SERVICES INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

**NATIONS FUND I, LLC**

Per:

  
\_\_\_\_\_  
Name: Dennis J. Bickerstaff  
Title: Chief Risk Officer & EVP

**SCHEDULE "A"**  
**PURCHASED ASSETS**

<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>Serial</b>
2006	Freightliner	Tandem	1FVHALCG26DV46864
2006	Western Star	Tandem	5KKHALDE76PV35431
2011	Western Star	Tri	5KKPALDR9BPAZ1545
2013	Western Star	Tri	5KKPALDR5DPBX4389
2006	Western Star	Tri	5KKPALCKX6PV67440
2014	Western Star	Tri	5KKPALD10EPFZ0314
2014	Western Star	Tri	5KKPALD19EPFZ0313
2011	Kenworth	Tri	1NKDXBEX3BJ946734
2013	Western Star		5KKPALDR8DPBU4741
2013	West Star	Tri	5KKPALDR5DPBS7587
2013	West Star	Tri	5KKPALDR7DPBS7588
2006	Freightliner	Tri	1FVPALA V76DW79715
2012	Freightliner	Tri	1FVPGNDR6CDBJ2466
2013	Western Star	Tri	5KKPALDRXDPFJ8346
2013	Freightliner	Tandem	1FVHG3DV0DDBW2562
2012	Peterbuilt	Tri	1NPTX4TX9CD153460
2004	Travco WST	Tri	WW1028415200
2000	Mountain View	Tri	6510300700
2005	Westlake	Tri	SQ1030TRA37020554
2005	Westlake	Tri	SQ1030TRA37010550
2005	Westlake	Tri	SQ1030TRA37020552
2007	Four Lane	Tri	2AT70124970301964
1996	Dunmore	Tri	W9610302016
2001	Mountain View	Tri	10510300501
2003	Noble, Wellsite	Tri	NAL1028031949
2007	Auburn	Skid	S1262-200799-4399
2011	Chevrolet	2500 4x4	1GC1KXCG9BF258940
2012	Chevrolet	3500 4x4	1GC4K0C82CF140310
2013	Chevrolet	1500 4x4	3GCPKSE77DG243364
2010	Chevrolet	1500 4x4	1GC4K1BG1AF140598
2013	Ford F350 Lariat	F350	1FT8W3BT1EEA06331
2013	GMC Sierra	1500 4x4	3GTP2VE75DG364492
1990	Homemade	Single	NWUT104
2005	Pace American	Tandem	4P2UB122054063800
2014	Road Clipper	Tandem	46UFU222XE 1155446

**SCHEDULE "B"**  
**FORM OF PURCHASER'S OFFICER'S CERTIFICATE**

**TO: BearStone Environmental Solutions Inc. (the "Vendor")**

**RE: Asset Purchase and Sale Agreement dated July 15, 2019 among the Vendor, Silverpoint Energy Services Inc. (the "Purchaser"), New West Energy Services Inc. and Nations Fund I, LLC (the "Agreement")**

Unless otherwise defined herein, the definitions provided for in the Agreement are adopted in this certificate (the "**Certificate**").

I, Gerry E. Kerkhoff, President of the Purchaser, hereby certify that as of the date of this Certificate:

1. I am personally familiar, in my capacity as an officer of the Purchaser, with the matters hereinafter mentioned.
2. Each of the covenants, representations and warranties of the Purchaser contained in Article 5 of the Agreement were true and correct in all material respects when made and are true and correct in all material respects as of the Closing Date.
3. All obligations of the Purchaser contained in the Agreement to be performed prior to or at Closing have been timely performed in all material respects.
4. The conditions to Closing set forth in Article 7 of the Agreement for the benefit of the Purchaser have been satisfied or waived to the full satisfaction of the Purchaser.
5. This Certificate is made for and on behalf of the Purchaser and is binding upon it, and I am not incurring, and will not incur, any personal liability whatsoever with respect to it.
6. This Certificate is made with full knowledge that the Vendor is relying on the same for the Closing of the Transaction.

IN WITNESS WHEREOF I have executed this Certificate this \_\_\_ day of \_\_\_\_\_, 2019.

**SILVERPOINT ENERGY SERVICES INC.**

Per:

\_\_\_\_\_  
Name: Gerry E. Kerkhoff  
Title: President

**SCHEDULE "C"**  
**FORM OF BILL OF SALE AND GENERAL CONVEYANCE**

**BILL OF SALE AND GENERAL CONVEYANCE**

**THIS BILL OF SALE AND GENERAL CONVEYANCE** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019,

**BY:** **BEARSTONE ENVIRONMENTAL SOLUTIONS INC.** (the "**Vendor**")

**IN FAVOUR OF:** **SILVERPOINT ENERGY SERVICES INC.**, a body corporate incorporated under the laws of the Province of Alberta (the "**Purchaser**")

**WHEREAS** the Purchaser and the Vendor are parties to an asset purchase and sale agreement dated as of July 15, 2019 (the "**Asset Purchase Agreement**");

**AND WHEREAS** pursuant to the Asset Purchase Agreement, the Vendor has agreed to sell the Purchased Assets (as defined in the Asset Purchase Agreement) to the Purchaser;

**AND WHEREAS** the Vendor wish to convey to the Purchaser all of their right, title and interest in and to the Purchased Assets and the Purchaser wishes to accept that conveyance.

**NOW THEREFORE**, in consideration of the mutual promises contained in the Asset Purchase Agreement, and for other good and valuable consideration now given by the Purchaser to the Vendor (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. Capitalized terms used in this Bill of Sale and General Conveyance but not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.
2. The Vendor hereby sell, assign, transfer, convey and deliver to the Purchaser all of the right, title and interest of the Vendor in and to the Purchased Assets, at and from the Effective Time, to have and to hold the Purchased Assets, together with all benefit and advantage to be derived therefrom, to and for the Purchaser's use.
3. The Vendor shall from time to time hereafter, at the reasonable request of the Purchaser, make, do, execute and deliver, or cause to be made, done, executed and delivered, all such further acts, instruments and assurances as the Purchaser may reasonably request to more effectually sell, assign, transfer and convey the Purchased Assets to the Purchaser as set out in this Bill of Sale and General Conveyance.
4. If this Bill of Sale and General Conveyance, or any other conveyance or other instrument which may from time to time be executed and delivered by the Vendor, fails to convey to the Purchaser any right in or to any of the Purchased Asset intended to be conveyed to the Purchaser in accordance with the Asset Purchase Agreement, the Vendor shall hold that Purchased Asset in trust for the benefit of the Purchaser and shall execute and deliver, or caused to be executed and delivered, all further conveyances, transfers and instruments as the Purchaser may from time to time reasonably require in accordance with Section 3 hereof. In the event that such failure to convey the Purchased Assets to the Purchaser is due to the fault of the Purchaser, the Purchaser shall be solely responsible for, and shall pay, all costs, charges and expenses in connection with

any Purchased Asset held in trust by the Vendor pursuant to this Section 4 including, without limitation, all costs, charges and expenses incurred by the Vendor in connection with the execution and delivery of all necessary conveyances, transfers and instruments required to transfer any such asset to the Purchaser.

5. This Bill of Sale and General Conveyance is made pursuant to the Asset Purchase Agreement and is not in derogation of any of the rights or obligations that the Vendor or the Purchaser have under the Asset Purchase Agreement. The terms of the Asset Purchase Agreement shall not merge in this Bill of Sale and General Conveyance. In the event of any conflict or inconsistency between this Bill of Sale and General Conveyance and the Asset Purchase Agreement, the Asset Purchase Agreement shall govern and prevail.
6. This Bill of Sale and General Conveyance shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
7. This Bill of Sale and General Conveyance shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, as the case may be.
8. This Bill of Sale and General Conveyance may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall constitute an original and all of which, when taken together, shall constitute one and the same Bill of Sale and General Conveyance. Delivery of an executed counterpart of this Bill of Sale and General Conveyance by facsimile transmission or in portable document format shall constitute delivery of an executed counterpart of this Bill of Sale and General Conveyance.

**[The remainder of this page is intentionally left blank.]**

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Bill of Sale and General Conveyance as of the date first written above.

**BEARSTONE ENVIRONMENTAL SOLUTIONS INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

**SILVERPOINT ENERGY SERVICES INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

**SCHEDULE "D"**  
**TERM LOAN AND SECURITY AGREEMENT**



**TERM LOAN AND SECURITY AGREEMENT**  
**(Reference No. SP-001)**

THIS TERM LOAN AND SECURITY AGREEMENT (this “**Agreement**”) is made effective as of the [add] day of July 2019, by and between NATIONS FUND I, LLC (“**Lender**”), NEW WEST ENERGY SERVICES INC. (the “**Parent**”) and SILVERPOINT ENERGY SERVICES INC. (“**Borrower**”) (the Parent and the Borrower are collectively the “**Loan Parties**”, and each a “**Loan Party**”).

The Borrower is desirous of obtaining a loan from the Lender and the Lender is willing to make the loan to the Borrower upon the terms and conditions set forth herein.

Capitalized terms used herein without definition shall have the meanings assigned to them in Schedule A attached hereto and, for purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Schedule A shall govern. All dollar amounts noted herein are in Canadian dollars unless stated otherwise.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**1. ADVANCE OF LOAN**

- (a) The Loan. On the terms and conditions hereinafter set forth, the parties agree that the Lender shall lend to the Borrower, in one or more Advances, an amount not to exceed in aggregate \$3,048,911 (the “**Loan**”).
- (b) Promissory Notes. The obligation to repay the Loan hereunder shall be evidenced by a promissory note in respect of each Advance payable by the Borrower to the order of the Lender in form and substance satisfactory to Lender (hereinafter individually referred to as a “**Promissory Note**” and collectively as the “**Promissory Notes**”).
- (c) Guarantors. In addition to providing the Guarantee, the Parent shall be required to ensure that all future subsidiaries of the Parent, within 10 days of creation or acquisition, provide a guarantee of the Obligations to the Lender, provided that, as at the Closing Date, the Lender agrees that no guarantee shall be required from Porterco or BearStone.
- (d) Term of Loan. The Loan shall be repaid in full by the Stated Maturity Date noted in the Promissory Notes.
- (e) Purpose. All proceeds of the Loan shall be used by the Borrower to fund the Equipment Acquisition and to pay back wages and fees owing to those employees and contractors previously employed or engaged by BearStone and subsequently hired or engaged by the Borrower.
- (f) Single Loan. The Loan and the payment of all of the other Obligations of the Borrower to the Lender shall constitute one general obligation of the Loan Parties secured by all of the Collateral.
- (g) Currency. The Borrower shall make payment relative to each Obligation in Canadian dollars. If the Borrower makes, or is required to make payment of any amount hereunder in a currency other than Canadian dollars (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction) (the “**Other Currency**”),

such payment shall constitute a discharge of the liability of the Borrower hereunder in respect of the applicable amount owing only to the extent of the amount of Canadian dollars owed is actually received by the Lender on the date of receipt as determined by the Lender. If the amount of Canadian dollars which the Lender is able to purchase is less than the amount of Canadian dollars originally due in respect of the applicable payment, the Borrower shall indemnify and save the Lender harmless from and against any loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Lender and shall continue in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order. A certificate of the Lender as to any such loss or damage shall constitute prima facie evidence thereof, in the absence of manifest error.

## 2. PAYMENTS, PREPAYMENT OF LOAN AND COLLATERAL REPLACEMENT

- (a) Principal Payment. On each Payment Date, the Borrower shall pay the aggregate principal payments owed with respect to the Loan as set forth in the applicable Promissory Note; provided, however, on the Stated Maturity Date or on any date of acceleration or prepayment in full of the Loan, the Borrower shall repay in full the aggregate, if any, of the then outstanding principal amount of the Loan plus all accrued and unpaid interest thereon and all other amounts owed hereunder and under each Loan Document related to the Loan. The Borrower shall pay accrued interest on the Loan on each Payment Date as provided in Section 2(c) hereof.
- (b) Acceleration. Upon any acceleration of the Loan pursuant to this Agreement or any other Loan Document, the Borrower shall immediately repay all (or if only a portion is accelerated thereunder, such portion of) the Loan then outstanding, including all accrued and unpaid interest thereon and all other amounts owed under the Loan Documents.
- (c) Interest. Unless noted otherwise in the applicable Promissory Note, and subject to Section 2(a) and Section 2(d) hereof, interest shall accrue at the Loan Rate on the outstanding principal balance of the Loan starting on the date of the first Advance and until all amounts under the Loan are repaid in full. Interest and repayment of the principal balance of the Loan shall be payable on each Payment Date in accordance with the terms of the Promissory Notes. In no event will the Lender charge, or will the Borrower be liable to pay interest at a rate that exceeds the highest rate of interest permissible under Applicable Law, or that is not in compliance with any applicable usury laws. Any excess interest shall be adjusted as set forth in any Promissory Note. If any payment due hereunder is not received within five (5) days of its due date, the Borrower shall incur and shall be liable to pay a late charge equal to five (5) percent of the amount in arrears.
- (d) Default Rate. Effective upon the occurrence of any Default and for so long as any Default shall be continuing: (i) the Loan Rate shall automatically be increased by a nominal amount equal to two (2) percent per annum (such increased rate, the “**Default Rate**”); and (ii) all outstanding Obligations, including unpaid interest, shall continue to accrue interest from the date of such Default at the Default Rate applicable to such Obligations.
- (e) Payment Date. If any payment to the Lender under this Agreement becomes due and payable on a day other than a Business Day, such Payment Date shall be extended to the next succeeding Business Day (unless such next succeeding Business Day is in the next calendar month, in which case such payment date shall be the immediately preceding Business Day) and the interest portion of such payment shall be calculated at the then applicable rate during such extension, provided that for greater certainty, if

such next Business Day is in the succeeding calendar month and the payment is made on the immediately preceding Business Day, there shall be no change in the payment amount.

- (f) Interest Act (Canada). Solely for purposes of the *Interest Act (Canada)*: (1) whenever interest is to be computed or expressed at any rate (the “**Specified Rate**”) on the basis of a year of less than 365 days or any other period of time less than a calendar year hereunder, the annual rate of interest to which each such Specified Rate is equal is such Specified Rate multiplied by a fraction, the numerator of which is the actual number of days in the applicable year and the denominator of which is 360 or such other period of time, respectively; (2) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder; and (3) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.
- (g) Payment by Wire Transfer. The Borrower shall make each payment under this Agreement without set-off, counterclaim or deduction and free and clear of all Taxes not later than 1:00 p.m. Eastern Standard Time, on the day when due in lawful money of Canada by wire transfer of immediately available funds to such account as the Lender shall specify from time to time in writing. If the Borrower shall be required by law to deduct any Taxes from any payment to the Lender under any Loan Document, then the amount payable to the Lender shall be increased so that, after making all required deductions, the Lender receives an amount equal to that which it could have received had no such deductions been made. For purposes of computing interest and fees, any payments received after 1:00 p.m. Eastern Standard Time, shall be deemed received by the Lender on the next Business Day.
- (h) Application of Payments. The Borrower irrevocably agrees that the Lender shall have the continuing and exclusive right to apply any and all payments against the then due and payable Obligations in such order as the Lender may deem advisable. The Lender is authorized to, and at its option may (without prior notice or precondition and at any time or times), but shall not be obligated to, make or cause to be made advances on behalf of the Borrower for: (1) payment of all reasonable fees, expenses, indemnities, charges, costs, principal, interest, or other Obligations owing by the Borrower under this Agreement or any of the other Loan Documents, (2) the payment, performance or satisfaction of any of the Borrower’s obligations hereunder with respect to preservation of the Collateral, or (3) any premium in whole or in part required in respect of any of the policies of insurance required by this Agreement, even if the making of any such advance causes the outstanding balance of the Loan to exceed the Maximum Amount and the Borrower agrees to repay immediately, in cash, any amount by which the Loan exceeds the Maximum Amount.
- (i) Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other governmental authority affects or would affect the amount of capital required or expected to be maintained by the Lender or any Person controlling the Lender, and the Lender determines that the rate of return on its or such controlling Person’s capital as a consequence of making its Loan is reduced to a level below that which the Lender or such controlling Person could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by the Lender to the Borrower, the Borrower shall immediately pay directly to the Lender additional amounts sufficient to compensate the Lender or such controlling Person for such reduction in rate of return. A statement of the Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.

- (j) Prepayments.
  - (i) The Borrower may fully or partially prepay the Loan at any time.
  - (ii) Any prepayment made to the Loan, including repayments under Section 2(k), shall be applied to the principal repayment schedule set out in the applicable Promissory Note in inverse order of maturity.
  
- (k) Proceeds of Disposition or Replacement of Collateral.
  - (i) The Borrower may at any time and from time to time, in connection with the sale, exchange, or disposal of any item of Collateral (the “**Disposed Collateral**”) in the ordinary course of the Borrower’s business, partially prepay the Loan and obtain a discharge of the Lender’s security interest in the Disposed Collateral provided that either:
    - (1) The Borrower provides the Lender with a first charge security interest (subject to Permitted Liens) in an alternative item of Collateral which is reasonably acceptable to the Lender, is free and clear of any security interests or other charges (other than Permitted Liens) with a realizable value that is equal or greater value than the Disposed Collateral; or
    - (2) The Borrower pays to the Lender the proportion attributable to the Disposed Collateral of the outstanding principal amount of the Loan, all accrued interest thereon, all other amounts then due and owing under any Loan Document, none of which shall be refundable.

For the purposes of this Section, the proportion of the Loan attributable to the Disposed Collateral shall be equal to the proportion of the Loan initially attributed to the Disposed Collateral as set forth in the Collateral Schedule delivered in connection with the Loan.

  - (ii) For the purpose determining the realizable value applicable to the Disposed Collateral, or any Collateral proposed as a substitute Collateral therefor, whether in connection with a partial prepayment or otherwise, the realizable value in each case shall be (i) in connection with Disposed Collateral, the amount actual received by the Borrower for the Disposed Collateral and (ii) in the case of substitute Collateral, 75% of the appraised forced liquidation value of the substitute Collateral.

### 3. SECURITY

As security for the payment as and when due of the indebtedness of the Borrower to the Lender hereunder and under the Promissory Notes (and any renewals, extensions and modifications thereof) and under any other agreement or instrument, both now in existence and hereafter created (as the same may be renewed, extended or modified), and the performance and payment as and when due of all other Obligations of the Borrower to the Lender, both now in existence and hereafter created (as the same may be renewed, extended or modified), the Borrower hereby grants to the Lender a security interest in all of its right, title and interest in and to the items of equipment described on the collateral schedule(s) in form and substance satisfactory to the Lender (hereinafter collectively referred to as the “**Collateral Schedule**”) now or hereafter executed in connection with the Promissory Notes, and all replacements, substitutions and exchanges therefor and thereof and accessions thereto (collectively, the “**Equipment**”) and any and all insurance and/or other proceeds thereof (collectively, the “**Collateral**”). The Lender agrees, upon prepayment of the Loan in accordance with the terms hereof or the terms of the applicable Promissory Note or any disposition of Collateral otherwise permitted by this Agreement, and provided that no Default exists hereunder or under any other agreement between

the Lender and the Borrower, that it shall forthwith release its security interest and any cross-collateralization of the applicable item of equipment. The Borrower agrees that, with respect to the Collateral, the Lender shall have all of the rights and remedies of a secured party under the PPSA. The Lender may require the Borrower, and the Borrower agrees, to execute and deliver security documents granting liens in the Collateral in favour of the Lender but the Lender shall have no obligation to formalize or perfect its security beyond this Agreement. The Borrower hereby authorizes the Lender to file financing statements under the PPSA ("**Financing Statements**") describing the Collateral. Without the Lender's prior written consent, the Borrower agrees not to file any corrective or termination statements or partial releases with respect to any Financing Statements filed by the Lender pursuant to this Agreement. The Borrower hereby waives any and all rights the Borrower has or may have under Section 43 of the PPSA to receive a copy of any financing statement or financing change statement filed by or for the Lender or any verification statement in respect thereof.

#### **4. CONDITIONS PRECEDENT TO LENDER'S OBLIGATION**

The obligation of the Lender to make the Loan as set forth in Section 1 hereof is expressly conditioned upon compliance by the Loan Parties, to the reasonable satisfaction of the Lender, of the following conditions precedent. On or prior to the Closing Date, the Loan Parties shall provide, or cause to be provided, to the Lender the following:

- (a) A duly executed copy of the Asset Purchase Agreement.
- (b) A duly executed copy of this Agreement.
- (c) Evidence satisfactory to the Lender as to due compliance by the Borrower with the insurance provisions of Section 6(g) hereof.
- (d) An original Guarantee duly executed on behalf of the Parent.
- (e) An original Promissory Note or Promissory Notes in the amount of the Advance or Advances, as applicable duly executed on behalf of the Borrower, pursuant to Section 1 hereof.
- (f) A Collateral Schedule describing the Collateral to which the Loan relates.
- (g) Evidence satisfactory to the Lender that upon the Loan, all liens and security interests of any third parties against the Collateral will be terminated and discharged.
- (h) Such bills of sale, no interest letters, authorizations to discharge and discharges or subordination agreements shall have been obtained and such filings shall have been made and other actions taken as reasonably may be required by the Lender to perfect a valid, first priority security interest granted by the Borrower to the Lender with respect to the Collateral to which the Loan relates.

#### **5. REPRESENTATIONS AND WARRANTIES**

Each Loan Party hereby represents and warrants, for and on behalf of itself, to the Lender that:

- (a) Business Existence. It has the form of business organization, and is duly organized and validly existing in good standing under the laws of the jurisdiction, specified below its signature on the signature page of this Agreement, and is duly qualified and authorized to transact business and is in good standing wherever necessary to perform its obligations under the Loan Documents to which it is a party, including each jurisdiction in which the Collateral in which it has an interest is located.

- (b) Requisite Power and Authority. It has the requisite power and authority to own or hold under lease its properties and to enter into and perform its obligations hereunder; and, in the case of the Borrower, the borrowing hereunder by the Borrower from the Lender, and the execution and delivery by it and the performance of its obligations under the Loan Documents to which it is a party: (1) have been duly authorized by all necessary action consistent with such Loan Party's form of organization; (2) do not require any approval or consent of any shareholder or holders of any indebtedness or obligations of such Loan Party except such as have been duly obtained; and (3) do not and will not contravene any law, governmental rule, regulation or order now binding on such Loan Party, or the organizational documents of such Loan Party, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon the property of such Loan Party under any agreement to which such Loan Party is a party or by which it or its property is bound.
- (c) No Consents or Approvals. Neither the execution and delivery by it of the Loan Documents to which it is a party, nor the consummation of any of the transactions by such Loan party contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, provincial or foreign governmental authority or agency, except as provided herein.
- (d) Enforceability. This Agreement constitutes, and all other Loan Documents to which it is a party when entered into by it will constitute, its legal, valid and binding obligations, enforceable against such Loan Party in accordance with the terms hereof and thereof, except as limited by applicable bankruptcy, insolvency, receivership, moratorium or similar laws or equitable principles relating to or affecting the enforcement of creditors' rights generally, and by Applicable Laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein and therein.
- (e) Litigation. There are no pending or threatened actions or proceedings to which it is a party, and there are no other pending or threatened actions or proceedings of which it has knowledge, before any court, arbitrator or administrative agency, which, either individually or in the aggregate, would have a Material Adverse Effect. Further, it is not in default under any material obligation for the payment of borrowed money, for the deferred purchase price of property or for the payment of any rent which, either individually or in the aggregate, which default would have a Material Adverse Effect.
- (f) Not Real Property Fixtures. Under the laws of the provinces in which the Equipment in which it has an interest is located, such Equipment consists solely of personal property and not fixtures.
- (g) Validity and Priority of Security Interest. Upon satisfaction of the conditions precedent in Section 4 hereof and the making of the first Advance by the Lender, it will have good and marketable title to the Equipment in which it has an interest, free and clear of all Liens and encumbrances (excepting only Permitted Liens) and the Lender will have a valid, perfected, first priority security interest in such item of Collateral (subject to Permitted Liens).
- (h) Financial Statements. The financial statements of such Loan Party (copies of which have been furnished to the Lender) have been prepared in accordance with GAAP, and fairly present in all material respects each Loan Party's consolidated financial condition and the results of each Loan Party's operations as of the date of and for the period covered by such statements, and since the date of such statements there has been no Material Adverse Effect on such conditions or operations other than the BearStone Receivership.

- (i) Tax Returns and Payments. It has filed or has caused to have been filed all federal, provincial and local tax returns which, to its knowledge, are required to be filed by it, and has paid or caused to have been paid all taxes as shown on such returns or on any assessment received by it, to the extent that such taxes have become due, unless and to the extent only that such taxes, assessments and governmental charges are currently contested in good faith and by appropriate proceedings by it and adequate reserves therefor have been established as required under GAAP.
- (j) No Violation of Law. It is not in violation of any law, ordinance, governmental rule or regulation to which it is subject and the violation of which would have a Material Adverse Effect, and it has obtained any and all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its properties and the conduct of its business, except where the failure to obtain such license, permit, franchise or other governmental authorization would not have a Material Adverse Effect.
- (k) Business Information. Its legal name, jurisdiction of organization and Corporate Access Number specified on the signature page hereof is true and correct and its address on such signature page is the address of its chief executive office. Within the previous six (6) years, it has not changed its name, done business under any other name, or merged or been the surviving entity of any merger, except as disclosed to the Lender in writing or as previously disclosed to the Lender.
- (l) Full Disclosure. No information relating to it contained in any Loan Document or any written statement or document furnished by or on behalf of such Loan Party under any Loan Document, or to induce the Lender to execute the Loan Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.
- (m) Subsidiaries. The only subsidiaries of the Parent on the Closing Date are the Borrower, Porterco and BearStone. As at the Closing Date, Porterco has no assets or operations.

## 6. COVENANTS OF LOAN PARTIES

- (a) Application of Proceeds. The Borrower shall use the proceeds of the Loan exclusively for the purposes set forth in Section 1(e).
- (b) Use of Collateral. The Borrower shall cause the Equipment in which it has an interest to be used solely in the Provinces of Alberta, British Columbia and Saskatchewan, or in any other jurisdiction in respect of which the Lender has given its prior written consent (which consent shall not be unreasonably withheld), and in the conduct of its business and in a careful and proper manner; shall not permanently discontinue use of the Collateral unless it otherwise maintains such Collateral in accordance with the provisions of this Agreement; and shall provide written notice to the Lender not more than thirty (30) days after any change of the location of any item of Equipment (or the location of the principal base of any item of Equipment, to the extent that such item is mobile equipment) as specified on the applicable Collateral Schedule.
- (c) No Sale or Further Encumbrance. Other than as contemplated by Section 2(k), the Borrower shall not dispose of its interest in the Collateral without the prior written consent of the Lender, and such disposition shall be on arm's length terms and for full market value. The Borrower shall maintain the Collateral in which it has an interest free from all claims, Liens and legal processes of its creditors other than:
  - (i) Liens for fees, taxes, or other governmental charges of any kind which are not yet delinquent or are being contested in good faith by appropriate

proceedings which suspend the collection thereof (provided, however, that such proceedings do not involve any substantial danger of the sale, forfeiture or loss of the Equipment or any interest therein);

- (ii) Liens of mechanics, materialmen, laborers, employees or suppliers and similar Liens arising by operation of law incurred by the Borrower in the ordinary course of business for sums that are not yet delinquent or are being contested in good faith by negotiations or by appropriate proceedings which suspend the collection thereof (provided, however, that such contest does not involve any substantial danger of the sale, forfeiture or loss of the Equipment or any interest therein);
- (iii) Liens arising out of any judgments or awards against the Borrower which have been adequately bonded to protect the Lender's interests or with respect to which a stay of execution has been obtained pending an appeal or a proceeding for review;
- (iv) Liens arising merely by operation of law in the ordinary course of business of the Borrower, consented to in writing by the Lender, such consent not to be unreasonably withheld;
- (v) All Liens created by or in favour of the Lender, including pursuant to this Agreement; and
- (vi) Liens in respect of which the Lender has given its written consent

(collectively, "**Permitted Liens**").

The Borrower shall notify the Lender promptly upon receipt by it of notice of any Lien, attachment or judicial proceeding affecting the Equipment in which it has an interest in whole or in part, and in any event within two (2) Business Days.

- (d) Fees and Taxes. The Borrower will, at its own expense, pay or cause to be paid all taxes and fees relating to its ownership and use of the Equipment in which it has an interest. The Borrower will keep and maintain, or cause to be kept and maintained the Equipment in at least as good operating condition as on the date of execution hereof (or on the date on which acquired, if such date is subsequent to the date of execution hereof), provided that any improvements to the Equipment or improvements to the standard of maintenance of such Equipment shall form the minimum condition or standard of maintenance on a go forward basis, except in either case for ordinary wear and tear resulting from proper use thereof. The Borrower will provide all maintenance and service and make all repairs necessary for such purpose. In addition, if any parts or accessories forming part of such Equipment shall from time to time after the date hereof become worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, the Borrower, at its own expense, will within a reasonable time replace such parts or accessories or cause the same to be replaced, with replacement parts or accessories which are free and clear of all Liens, encumbrances or rights of others and have a value and utility at least equal to the parts or accessories replaced. All accessories, parts and replacements for or which are added to or become attached to the Equipment shall immediately be deemed incorporated in the Equipment and subject to the security interest granted by the Borrower herein.
- (e) Loss or Damage. The Borrower shall advise the Lender in writing within ten (10) days of the occurrence of any material damage, loss, theft, destruction or governmental confiscation or appropriation of any item of the Equipment in which it has an interest (an "**Event of Loss**") and of the circumstances and extent of such Event of Loss and,



within thirty (30) days after receipt of notice from the Lender, it shall (at the Lender's option) either: (1) replace the item of Equipment having suffered the Event of Loss with equipment which is free and clear of all Liens (other than Permitted Liens) and has a value and utility at least equal to the item of Equipment having suffered the Event of Loss, and such replacement equipment shall immediately be deemed "Equipment" hereunder and subject to the security interest granted pursuant to Section 3 hereof; (2) prepay the Obligations to the extent attributable to the unpaid portion of the Obligations funded with respect to the item of Equipment having suffered the Event of Loss (as reasonably determined by the Lender); or (3) the Lender shall retain any payments received under Section 7(g) below, provided such payments cover the value of the item of Equipment having suffered the Event of Loss. If any item of Equipment is damaged and such damage can be repaired, the Borrower shall (at its expense) promptly effect such repairs. Proceeds of insurance shall be paid to the Lender with respect to such reparable damage to the Equipment and shall, at the election of the Lender, be applied either to the repair of the Equipment by payment by the Lender directly to the party completing the repairs, or to the reimbursement of the Borrower for the cost of such repairs; provided, however, that the Lender shall have no obligation to make such payment or any part thereof until receipt of such evidence as the Lender shall deem satisfactory that such repairs have been completed, and further provided that the Lender may apply such proceeds to the payment of any installment or other sum due or payable.

- (f) Personal Property. The Borrower and the Lender intend that the Equipment shall remain personal property, notwithstanding the manner in which it may be affixed to any real property, and the Borrower shall obtain and deliver to the Lender (to be recorded at the Borrower's expense) from each Person having an interest in or Lien on the property (the "Premises") where the Equipment in which it has an interest is to be located, waivers of any Lien, encumbrance or interest which such Person might have or hereafter obtain or claim with respect to such Equipment.
  
- (g) Insurance. At its own expense, the Borrower shall keep the Equipment in which it has an interest or cause such Equipment to be kept insured against loss or damage due to fire and the risks normally included in extended coverage, malicious mischief and vandalism, for the full replacement value thereof. All insurance for loss or damage shall provide that losses, if any, shall be payable to the Lender under a lender's loss payee endorsement, which shall be evidenced by adding the Lender as a first loss payee in respect of the Collateral on the certificate of insurance of the Borrower. The proceeds of such insurance payable as a result of loss of or damage to the Collateral shall be applied, at the Lender's option, (x) toward the replacement, restoration or repair of the Collateral which may be lost, stolen, destroyed or damaged, or (y) toward payment of the balance outstanding on the Promissory Notes or the Obligations. In addition, the Borrower shall also carry public liability insurance, both personal injury and property damage. All insurance required hereunder shall be in form and amount and with companies satisfactory to the Lender, acting reasonably. The Borrower shall pay or cause to be paid the premiums therefor and deliver to the Lender evidence satisfactory to the Lender of such insurance coverage. The Borrower shall cause to be provided to the Lender, prior to the scheduled expiration or lapse of such insurance coverage, evidence satisfactory to the Lender of renewal or replacement coverage. Each insurer shall agree, by endorsement upon the policy or policies issued by it, or by independent instrument furnished to the Lender, that (1) it will give the Lender thirty (30) days' prior written notice of the effective date of any material alteration or cancellation of such policy; and (2) the interest of any named loss payee other than the Borrower shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of the Borrower with respect to such policy or policies.

- (h) Further Assurances. Each Loan Party shall promptly and duly execute and deliver to the Lender such further documents, instruments and assurances and take such further action as the Lender may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created in favor of the Lender hereunder; including, without limitation, the addition of any Affiliate of either of the Loan Parties as a guarantor, and the execution and delivery of any document reasonably required, and payment of all necessary costs to record such documents (including payment of any documentary or stamp tax), to perfect and maintain perfected the security interest granted by it under this Agreement.
- (i) Notices to Lender. Each Loan Party shall provide written notice to the Lender: (1) not less than thirty (30) days prior notice of any change in its name, jurisdiction of organization or address of its chief executive office; and (2) promptly upon the occurrence of any event which constitutes a Default or Pending Default.
- (j) Delivery of Financial Information. Parent shall furnish the Lender (1) within one hundred twenty (120) days after the end of each fiscal year of Parent, its consolidated balance sheet as at the end of such year, and the related consolidated statement of income and statement of changes in financial position for such fiscal year, prepared in accordance with GAAP, all in reasonable detail and certified by independent certified public accountants of recognized standing selected by Parent and reasonably acceptable to the Lender; (2) within sixty (60) days after the end of each quarter of Parent's fiscal year (other than the fourth quarter), its unaudited consolidated balance sheet as at the end of such quarter and the related consolidated statement of income and statement of changes in financial position for such quarter, prepared in accordance with GAAP; and (3) within thirty (30) days after the date on which they are filed, all material reports, forms and other filings required to be made by Parent (or the Borrower) to any recognized stock exchange or other securities regulatory body under whose jurisdiction or policies, such person is regulated or to which such person is otherwise subject if any, as and when filed (by furnishing these such forms or filings, or making them publicly available in electronic form, in each case, within the time periods set forth in clauses (1) and (2), Parent shall be deemed to have satisfied the requirements of clauses (1), (2) and (3)).
- (k) Notice of Bankruptcy. Each Loan Party shall provide written notice to the Lender of the commencement of proceedings under any and all bankruptcy, insolvency, receivership, reorganization or similar laws under Applicable Law (as now or hereafter in effect) involving it, and, in the case of the Parent, any direct or indirect subsidiary of the Parent as a debtor.
- (l) Bank Secrecy Act, etc. (1) It has been advised by the Lender that the USA Patriot Act establishes minimum standards of account information to be collected and maintained by the Lender, and that to help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account; and specifically, this means that when such Loan Party executes this Agreement, the Lender may ask for such Loan Party's name and address, the date of birth of the officers executing this Agreement, and other information that will allow the Lender to identify such Loan Party; and that the Lender may also ask to see the driver's license or other identifying documents of the officers executing this Agreement on behalf of such Loan Party. (2) It is and will remain in full compliance with all Applicable Laws including, without limitation, (i) ensuring that no Person who owns a controlling interest in or otherwise controls such Loan Party is or shall be (A) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation, or (B) a Person designated under Sections 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any

related enabling legislation or any other similar Executive Orders, and (ii) compliance with all applicable Bank Secrecy Act ("BSA") laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations.

- (m) Indemnification. The Borrower shall indemnify (on an after-tax basis) and defend the Lender, its successors and assigns, and their respective directors, officers and employees, from and against any and all claims, actions and suits (including, without limitation, any Environmental Claim or Environmental Loss), and related attorneys' fees, of any kind, nature or description whatsoever arising, directly or indirectly, in connection with any of the Collateral (other than such as may result from the gross negligence or willful misconduct of the Lender, its successors and assigns, and their respective directors, officers and employees). The obligations of the Borrower under this Section 7(l) shall survive the expiration of the term of this Agreement.
- (n) Annual Equipment Appraisals. The Borrower shall permit and enable the Lender and all other Persons designated by the Lender, to attend the premises to perform an annual physical inspection of all Equipment in which it has an interest and to obtain an appraisal report in form and substance reasonably satisfactory to the Lender at the cost of the Loan Parties.
- (o) Equipment Inspections. The Borrower shall permit and enable the Lender and all Persons designated by the Lender, to visit and inspect the Equipment during normal business hours up to four times per any twelve-month period, for the first eighteen months, and once per any twelve-month period thereafter, at the cost of the Borrower.

## 7. DEFAULT

A default shall be deemed to have occurred hereunder (a "Default") upon the occurrence of any of the following events:

- (a) if the Borrower fails to make any payment of principal and/or interest when due hereunder or under any Promissory Note on the applicable Payment Date;
- (b) if the Borrower fails to make any payment of an amount when due hereunder or under any Promissory Note (other than a payment described in paragraph (a)) and such default continues for at least five (5) days after written notice to the Borrower thereof;
- (c) the failure by any Loan Party to maintain, use or operate the Collateral in compliance with Applicable Law;
- (d) if the Borrower fails to perform its obligations under Section 7(c) and Section 7(g) and such default continues for at least five (5) days after written notice to the Borrower thereof;
- (e) the occurrence of a payment or other default by the Borrower or its Affiliates under any loan, lease, agreement, guarantee or other financial obligation to the Lender or its Affiliates which default entitles the other party to such obligation to exercise any remedies;
- (f) the occurrence of a payment or other default by the Borrower or its Affiliates under any material loan, lease, guarantee or other material financial obligation to any third party which default has been declared;

- (g) if any representation or warranty made by a Loan Party in any financial statement or Loan Document proves to be false or misleading, including any omission of any substantial contingent or unliquidated liability or claim against a Loan Party;
- (h) the failure by a Loan Party generally to pay its debts as they become due or its admission in writing of its inability to pay the same, or the commencement of any bankruptcy, insolvency, receivership or similar proceeding by or against a Loan Party or any of its properties or business (unless, if involuntary, the proceeding is dismissed within sixty (60) days of the filing thereof) or the rejection of this Agreement or any other Loan Document in any such proceeding;
- (i) a Loan Party shall (1) enter into any transaction of merger or amalgamation with another Person (such actions being referred to as an “**Event**”), unless such Loan Party is the surviving entity or the surviving entity is organized and existing under the laws of Canada or any province of Canada, and prior to such Event: (A) such Person executes and delivers to the Lender (x) an agreement satisfactory to the Lender, in its sole discretion, containing such Person’s effective assumption, and its agreement to pay, perform, comply with and otherwise be liable for, in a due and punctual manner, all of such Loan Party ‘s Obligations having previously arisen, or then or thereafter arising, under any and all of the Loan Documents to which it is a party, and (y) any and all other documents, agreements, instruments, certificates, opinions and filings requested by the Lender; and (B) the Lender is satisfied as to the creditworthiness of such Person, and as to such Person’s conformance to the other standard criteria then used by the Lender when approving transactions similar to the transactions contemplated in this Agreement; (2) cease to do business as a going concern, liquidate, or dissolve; or (3) sell, transfer, or otherwise dispose of all or substantially all of its assets or property;
- (j) effective control of the Borrower’s voting capital stock/membership interests/partnership interests, issued and outstanding from time to time, is not retained by the present holders (unless the Borrower shall have provided thirty (30) days’ prior written notice to the Lender of the proposed disposition and the Lender shall have consented thereto in writing);
- (k) there occurs a default or anticipatory repudiation under any guarantee executed in connection with this Agreement;
- (l) there occurs a breach by either Loan Party of Section 7(j) of this Agreement; or
- (m) breach by the either Loan Party of any other covenant, condition or agreement (other than those in items (a)-(l) above) under this Agreement or any of the other Loan Documents that continues for thirty (30) days after the Lender’s written notice to the Borrower (but such notice and cure period will not be applicable unless such breach is curable by practical means within such notice period).

The occurrence of a Default with respect to any Promissory Note shall, at the sole discretion of the Lender (as set forth in a written declaration to the Borrower), constitute a Default with respect to any or all of the other Promissory Notes. Notwithstanding anything to the contrary set forth herein, the Lender or its assignee(s) (as applicable) may exercise all rights and remedies hereunder or under a Promissory Note independently with respect to each Promissory Note and/or with respect to the Collateral collateralizing such Promissory Note.

## **8. REMEDIES**

Upon the occurrence of a Default which is continuing, the Lender may, at its option, declare this Agreement to be in default and accelerate all Obligations hereunder and may do any one or more of the following, all of which are hereby authorized by the Borrower:

(a) Rights Under PPSA. Exercise any and all rights and remedies of a secured party under the PPSA or otherwise under Applicable Law and in addition to those rights, at its sole discretion, may require the Borrower (at its sole expense) to forward promptly any or all of the Collateral to the Lender at such location as shall reasonably be required by the Lender, or enter upon the premises where any such Collateral is located (without obligation for rent) and take immediate possession of and remove the Collateral by summary proceedings or otherwise, all without liability from the Lender to the Borrower for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise.

(b) Disposition of Collateral. Subject to Applicable Law, and any right of the Borrower to redeem the Collateral, sell, lease or otherwise dispose of any or all of the Collateral in a commercially reasonable manner at public or private sale with notice to the Borrower (the parties agreeing that ten (10) days' prior written notice shall constitute adequate notice of such sale) at such price as it may deem best, for cash, credit, or otherwise, with the right of the Lender to purchase and apply the proceeds:

First, to the payment of all expenses and charges, including the expenses of any sale, lease or other disposition, the expenses of any taking, attorneys' fees, court costs and any other expenses incurred or advances made by the Lender in the protection of its rights or the pursuance of its remedies, and to provide adequate indemnity to the Lender against all taxes and Liens which by law have, or may have, priority over the rights of the Lender to the monies so received by the Lender;

Second, to the payment of the Obligations; and

Third, to the payment of any surplus thereafter remaining to the Borrower or to whosoever may be entitled thereto;

and in the event that the proceeds are insufficient to pay the amounts specified in clauses "First" and "Second" above, the Lender may collect such deficiency from the Borrower.

(c) Other Rights and Remedies. The Lender may exercise any other right or remedy available to it under the Loan Documents or Applicable Law, or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement in whole or in part.

(d) Costs and Expenses; No Remedy Exclusive. In addition, the Borrower shall be liable for any and all reasonable unpaid additional sums due hereunder or under any Promissory Note before, after or during the exercise of any of the foregoing remedies; and for all reasonable legal fees and other reasonable costs and expenses incurred by reason of any Default or of the exercise of the Lender's remedies with respect thereto. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative, and shall be in addition to any other remedy referred to above or otherwise available at law or in equity, and may be exercised concurrently or separately from time to time. The Borrower hereby waives any and all existing or future claims to any offset against the sums due hereunder or under any Promissory Note and agrees to make the payments regardless of any offset or claim which may be asserted by the Borrower or on its behalf in connection with this Agreement.

(e) No Waiver. The failure of the Lender to exercise, or delay in the exercise of, the rights granted hereunder upon any Default by a Loan Party shall not constitute a waiver of any such right upon the continuation or recurrence of any such Default. The Lender may take or release other security; may release any party primarily or secondarily liable for the Obligations; may grant extensions, renewals or indulgences with respect to the

Obligations and may apply any other security therefor held by it to the satisfaction of the Obligations without prejudice to any of its rights hereunder.

**9. NOTICES.**

All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, personally delivered, sent by overnight courier service, sent by facsimile telecopier, or sent by certified mail, return receipt requested, addressed to the Lender or the Loan Parties at their respective addresses stated below the signature of such parties or at such other addresses as such parties shall from time to time designate in writing to the other parties; and shall be effective from the date of receipt.

**10. LENDER'S RIGHT TO PERFORM FOR LOAN PARTIES.**

- (a) Performance and Reimbursement. If any Loan Party fails to perform or comply with any of its agreements contained herein the Lender shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any reasonable out-of-pocket expenses and other reasonable expenses of the Lender thereby incurred, together with interest thereon at the Default Rate, shall be due and payable by such Loan Party upon demand.
- (b) Power of Attorney. The Borrower hereby appoints the Lender as the Borrower 's attorney-in-fact (which power shall be deemed coupled with an interest) to execute, endorse and deliver any deed, conveyance, assignment or other instrument in writing as may be required to vest in the Lender any right, title or power which by the terms hereof are expressed to be conveyed to or conferred upon the Lender, including, without limitation, real property waivers, and documents and cheques or drafts relating to or received in payment for any loss or damage under the policies of insurance required hereby, but only to the extent that the same relates to the Collateral.

**11. SUCCESSORS AND ASSIGNS.**

This Agreement shall inure to the benefit of the Lender, its successors and assigns, and shall be binding upon Loan Parties and their successors and permitted assigns. The rights and obligations of each Loan Party under this Agreement may not be assigned or delegated. The Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, the Lender's rights and obligations hereunder, in the Promissory Notes, in the Collateral and/or the Obligations held by it to others at any time and from time to time; and the Lender may disclose to any such purchaser, assignee, transferee or participant (the "**Participant**"), or potential Participant, this Agreement and all information, reports, financial statements and documents executed or obtained in connection with this Agreement which the Lender now or hereafter may have relating to the Loan, Loan Parties, or the business of Loan Parties. Each Loan Party hereby grants to any Participant all Liens, rights and remedies of the Lender under the provisions of this Agreement or any other documents relating hereto or under applicable laws. Each Loan Party agrees that any Participant may enforce such Liens and exercise such rights and remedies in the same manner as if such Participant were the Lender and a direct creditor of such Loan Party.

**12. CHOICE OF LAW: JURISDICTION: WAIVER OF JURY TRIAL.**

- (a) GOVERNING LAW. THIS AGREEMENT AND ALL OTHER RELATED INSTRUMENTS AND DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, IN ALL RESPECTS, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ALBERTA (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF

SUCH PROVINCE) AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL.

- (b) Jurisdiction. The parties agree that any action or proceeding arising out of or relating to this Agreement shall be commenced in the courts of the Province of Alberta, and each party irrevocably submits to the non-exclusive jurisdiction of such court and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it at its address designated pursuant hereto, or as otherwise provided under the laws of the Province of Alberta.
- (c) WAIVER OF JURY TRIAL. EACH LOAN PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH SUCH LOAN PARTY AND THE LENDER MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR ANY PROMISSORY NOTE. EACH LOAN PARTY AUTHORIZES THE LENDER TO FILE THIS PROVISION WITH THE CLERK OR JUDGE OF ANY COURT HEARING SUCH CLAIM. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY SUCH LOAN PARTY AND SUCH LOAN PARTY HEREBY ACKNOWLEDGES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH LOAN PARTY FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND ANY PROMISSORY NOTE AND IN THE MAKING OF THIS WAIVER BY LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

### 13. MISCELLANEOUS.

- (a) Entire Agreement. The Loan Documents constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.
- (b) Survival. All representations, warranties, and covenants of each Loan Party contained herein or made pursuant hereto shall survive closing and continue throughout the term hereof and until the Obligations are satisfied in full.
- (c) Severability. Any provision of the Loan Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, each Loan Party hereby waives any provision of law which renders any provision hereof or thereof prohibited or unenforceable in any respect.
- (d) Captions. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.
- (e) Time of Essence. Time is of the essence hereof.
- (f) Expenses. The Borrower agrees to pay or reimburse the Lender (without duplication) for all reasonable costs and expenses (including the reasonable fees and expenses of all counsel, advisors, consultants and auditors retained in connection therewith), incurred by the Lender in connection with: (1) the performance and enforcement of the Loan Documents and the preservation of any rights thereunder (including, without

limitation, filing or recording fees and taxes); (2) collection, including deficiency collections; (3) any amendment, waiver or other modification or waiver of, or consent with respect to, any Loan Document or advice in connection with the administration of the Loan or the rights thereunder; (4) any litigation, dispute, suit, proceeding or action (whether instituted by or between any combination of the Lender, Loan Parties or any other Person), and an appeal or review thereof, in any way relating to the Collateral, any Loan Document, or any action taken or any other agreements to be executed or delivered in connection therewith, whether as a party, witness or otherwise; and (5) any effort (i) to monitor the Loan, (ii) to evaluate, observe or assess the Borrower or the affairs of the Borrower, and (iii) to verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of the Collateral.

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IN WITNESS WHEREOF, the parties hereto have caused this Term Loan and Security Agreement to be duly executed as of the day and year first above written.

**NATIONS FUND I, LLC**

Lender

By: \_\_\_\_\_  
Name:  
Title:

501 Merritt Seven  
Norwalk, Connecticut 06851  
Facsimile: (203) 939-1597

**SILVERPOINT ENERGY SERVICES INC.**

Borrower

By: \_\_\_\_\_  
Name:  
Title:

500, 435 - 4 Avenue SW  
Calgary, AB T2P 3A8  
Facsimile: (403) 984-9799

Form of Organization: Corporation  
Jurisdiction of Organization: Alberta  
Corporate Access Number: 2017442803

**NEW WEST ENERGY SERVICES INC.**

Parent Guarantor

By: \_\_\_\_\_  
Name:  
Title:

500, 435 - 4 Avenue SW  
Calgary, AB T2P 3A8  
Facsimile: (403) 984-9799

Form of Organization: Corporation  
Jurisdiction of Organization: Canada  
Corporate Access Number: 213478720

## **SCHEDULE A DEFINITIONS**

Capitalized terms used in this Agreement and the other Loan Documents shall have (unless otherwise provided elsewhere in this Agreement or in the Loan Documents) the following respective meanings:

**“Advance”** shall mean each advance of funds in respect of the Loan as evidenced by a Promissory Note.

**“Adverse Environmental Condition”** shall mean (i) the existence or the continuation of the existence of an Environmental Contamination (including, without limitation, a sudden or non-sudden accidental or non-accidental Environmental Contamination), or exposure to any substance, chemical, material, pollutant, Hazardous Substance, odour or audible noise or other release or emission in, into or onto the environment (including without limitation, the air, ground, water or any surface) at, in, by, from or related to any Collateral, (ii) the environmental aspect of the transportation, storage, treatment or disposal of materials in connection with the operation of any Collateral, or (iii) the violation, or alleged violation, of any Environmental Law, permits or licenses of, by or from any governmental authority, agency or court relating to environmental matters connected with any of the Collateral.

**“Affiliate”** means, with respect to any Person: (i) each other Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, five (5) percent or more of the Stock having ordinary voting power for the election of directors of such Person; (ii) each other Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person; or (iii) each of such Person’s officers, directors, joint venturers and partners. For the purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting Stock, by contract or otherwise.

**“Agreement”** means this Loan and Security Agreement including all appendices, exhibits or schedules attached or otherwise identified thereto, restatements and modifications and supplements thereto, and any appendices, exhibits or schedules to any of the foregoing, each as in effect at the time such reference becomes operative.

**“Applicable Law”** means any law, rule, regulation, ordinance, order, code, common law, interpretation, judgment, directive, decree, treaty, injunction, writ, determination, award, permit or similar norm or decision of any Governmental Authority having jurisdiction over a Loan Party or the matters herein.

**“Asset Purchase Agreement”** means the asset purchase agreement dated July 16, 2019 between the Lender and Borrower.

**“BearStone”** means BearStone Environmental Solutions Inc.

**“BearStone Receivership”** means the appointment on July 16, 2019 of a receiver of BearStone by the Court of Queen’s Bench of Alberta pursuant to, among other things, s. 243 of the *Bankruptcy and Insolvency Act* (Canada) and section 13(2) of the *Judicature Act* (Alberta).

**“Borrower”** means the Person identified as such in the preamble of this Agreement.

**“BSA”** has the meaning assigned to it in Section 6(k) of this Agreement.

**“Business Day”** means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York or the City of Calgary, Alberta.

**“Closing Date”** means the date on which the conditions precedent in Section 4 are satisfied by the Loan Parties or waived by the Lender.

**“Collateral”** has the meaning assigned to it in Section 3 of this Agreement.

**“Collateral Schedule”** has the meaning assigned to it in Section 3 of this Agreement.

**“Default”** has the meaning assigned to it in Section 7 of this Agreement.

**“Default Rate”** has the meaning assigned to it in Section 2(d) of this Agreement.

**“Environment” or “Environmental” or “Environmentally”** means the components of the earth and includes: (i) air, land subsurface strata water, surface water and groundwater; (ii) all layers of the atmosphere; (iii) all organic and inorganic matter and living organisms; and (iv) the interacting natural systems that include components referred to in (i) to (iii).

**“Environmental Claim”** shall mean any accusation, allegation, notice of violation, claim, demand, abatement or other order on direction (conditional or otherwise) by any governmental authority or any Person for personal injury (including sickness, disease or death), tangible or intangible property damage, damage to the environment or other adverse effects on the environment, or for fines, penalties or restrictions, resulting from or based upon any Adverse Environmental Condition.

**“Environmental Contamination”** shall mean any actual or threatened release, spill, emission, leaking, pumping, injection, presence, deposit, abandonment, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, or into or out of any of the Collateral, including, without limitation, the movement or any Hazardous Substance or other substance through or in the air, soil, surface water, groundwater, or property which is not in compliance with applicable Environmental Laws.

**“Environmental Law”** means any Applicable Law, including any applicable guidelines and standards, relating in any way to the Environment, Environmental protection or occupational health and safety.

**“Environmental Loss”** shall mean any loss, cost, damage, liability, deficiency, fine, penalty or expense (including, without limitation, reasonable attorneys’ fees, engineering and other professional or expert fees), investigation, removal, cleanup and remedial costs (voluntarily or involuntarily incurred) and damages to, loss of the use of or decrease in value of the Collateral arising out of or related to any Adverse Environmental Condition.

**“Equipment”** has the meaning assigned to it in Section 3 of this Agreement.

**“Equipment Acquisition”** means the acquisition of the Equipment by the Borrower from the Lender pursuant to the Asset Purchase Agreement.

**“Event”** has the meaning assigned to it in Section 7(i) of this Agreement.

**“Event of Loss”** has the meaning assigned to it in Section 6 (e) of this Agreement.

**“Financing Statements”** has the meaning assigned to it in Section 3 of this Agreement.

**“GAAP”** means, generally accepted accounting principles in the Canada as in effect from time to time, consistently applied, including, if applicable to any Loan Party, IFRS or ASPE.

**“Governmental Authority”** means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**“Guarantee”** means a guarantee dated as of the Closing Date, granted by the Parent to the Lender guaranteeing the Obligations of the Borrower.

**“Hazardous Substance”** means any pollutants, contaminants, hydrocarbon contaminants, asbestos materials, hazardous, corrosive or toxic substances or underground or aboveground tanks, urea formaldehyde, deleterious substances, special waste or waste of any kind, including any substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the Environment which is prohibited, controlled, regulated or licensed under Environmental Law.

**“Interest Period”** has the meaning assigned to it in the applicable Promissory Note.

**“Lender”** has the meaning assigned to it in the preamble of this Agreement and, if at any time the Lender shall decide to assign, participate or syndicate all or any of the Obligations, such term shall include each such assignee, Participant or such other members of the syndicate; together with its or their successors and assigns.

**“Lien”** means any mortgage, security deed or deed of trust, pledge, hypothecation, assignment, deposit arrangement, Lien, charge, claim, security interest, security title, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the PPSA, any comparable law of any jurisdiction or any other statute governed by Applicable Law).

**“Loan”** has the meaning assigned to it in Section 1 of this Agreement, which loan is evidenced by the Promissory Notes and includes any renewals, extensions, revisions, modifications or replacements therefor or thereof.

**“Loan Documents”** means this Agreement, any Promissory Note, the Guarantee, and any other guarantee and the other documents and instruments executed by any of the Loan Parties pursuant hereto.

**“Loan Rate”** has the meaning assigned to it in the applicable Promissory Note.

**“Material Adverse Effect”** means: a material adverse effect on (a) the business, assets, operations or financial condition of a Loan Party or the industry within which a Loan Party operates, (b) the Borrower’s ability to pay or perform the Obligations under the Loan Documents in accordance with the terms thereof, (c) the Collateral or the Lien of the Lender on the Collateral granted hereunder or the priority of such Lien, or (d) the Lender’s rights and remedies under this Agreement and the other Loan Documents.

**“Maximum Amount”** means \$3,048,911.

**“Obligations”** means all loans, interest, advances, debts, expense reimbursement, fees, liabilities, and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by the Borrower to the Lender or any of the Lender’s Affiliates, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, whether arising under any of the Loan Documents or under any other agreement between the Borrower and the Lender or any of the Lender’s Affiliates, and all covenants and duties regarding such amounts. This term includes all principal, interest (including interest accruing at the then applicable rate provided in this Agreement after the maturity of the Loan and interest accruing at the then applicable rate provided in this Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, charges, expenses, attorneys’ fees and any other sum chargeable to the Borrower under any of the Loan Documents, and all principal, and interest due in respect of the Loan.

**“OFAC”** has the meaning assigned to it in Section 6(k) of this Agreement.

**“Other Currency”** has the meaning assigned to it in Section 1(g) of this Agreement.

**“Participant”** has the meaning assigned to it in Section 11 of this Agreement.

**“Payment Date”** has the meaning assigned to it in the applicable Promissory Note.

**“Pending Default”** means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute a Default.

**“Person”** means any individual, sole proprietorship, entity, limited liability entity, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation or government (whether Federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof), and shall include such Person’s successors and assigns.

**“Porterco”** means Porterco Oilfield Services Inc.

**“PPSA”** means the *Personal Property Security Act (Alberta)* and the regulations thereunder, as in effect from time to time.

**“Premises”** has the meaning assigned to it in Section 6(f) of this Agreement.

**“Proceeds”** means **“proceeds,”** as such term is defined in the PPSA and, in any event, shall include: (i) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to the Borrower from time to time with respect to any Collateral; (ii) any and all payments (in any form whatsoever) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any Collateral by any governmental body, authority, bureau or agency (or any Person acting under color of governmental authority); (iii) any recoveries by the Borrower against third parties with respect to any litigation or dispute concerning any Collateral, including claims arising at of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral; and (iv) any and all other amounts, rights to payment or other property acquired upon the sale, lease, licence exchange or other disposition of Collateral and all rights arising out of Collateral.

**“Promissory Note”** has the meaning assigned to it in Section 1(c) of this Agreement.

**“Specified Rate”** has the meaning assigned to it in Section 2(f) of this Agreement.

**“Stated Maturity Date”** has the meaning assigned to it in the Promissory Note.

**“Stock”** means all certificated and uncertificated shares, options, warrants, membership interests, general or limited partnership interests, participation or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a 11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

**“Taxes”** means taxes, levies, imposts, deductions, charges or withholdings imposed by a Governmental Authority, and all liabilities with respect thereto; excluding taxes imposed on or measured by the net income of the Lender.

Any accounting term used in this Agreement or the other Loan Documents shall have, unless otherwise specifically provided therein, the meaning customarily given such term in accordance with GAAP, and all financial computations thereunder shall be computed, unless otherwise specifically provided therein, in accordance with GAAP consistently applied; provided, that all financial covenants and calculations in the Loan Documents shall be made in accordance with GAAP as in effect on the Closing Date unless Loan Parties and the Lender shall otherwise specifically agree in writing. That certain items or computations are explicitly modified by the phrase “in accordance with GAAP” shall in no way be construed to limit the foregoing. All other undefined terms contained in this Agreement or the other Loan Documents all, unless the context indicates otherwise, have the meanings provided for by the PPSA. The words “herein,” “hereof” and “hereunder” or other words of similar import refer to this Agreement as a whole, including the exhibits and schedules thereto, as the same may from time to time be amended, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement.

For purposes of this Agreement and the other Loan Documents, the following additional rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural; (b) the term “or” is not exclusive; (c) the term “including” (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; and (e) all references to any instruments or agreements, including references to any of the Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

**SCHEDULE "E"**  
**REVOLVING TERM LOAN AND SECURITY AGREEMENT**

# NATIONS FUND I, LLC

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## REVOLVING TERM LOAN AND SECURITY AGREEMENT

THIS REVOLVING TERM LOAN AND SECURITY AGREEMENT (this "**Agreement**") is made effective as of the [add] day of July 2019, by and between NATIONS FUND I, LLC ("**Lender**"), NEW WEST ENERGY SERVICES INC. (the "**Parent**") and SILVERPOINT ENERGY SERVICES INC. ("**Borrower**") (the Parent and the Borrower are collectively the "**Loan Parties**", and each a "**Loan Party**").

The Borrower is desirous of obtaining a loan from the Lender and the Lender is willing to make the loan to the Borrower upon the terms and conditions set forth herein.

Capitalized terms used herein without definition shall have the meanings assigned to them in Schedule A attached hereto and, for purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Schedule A shall govern. All dollar amounts noted herein are in Canadian dollars unless stated otherwise.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

### 1. ADVANCE OF LOAN

- (a) The Loan. On the terms and conditions hereinafter set forth, the Lender shall make available to the Borrower a revolving term credit facility (the "**Loan**") in a maximum aggregate principal amount not to exceed the lesser of (i) \$1,500,000.00 and (ii) the "**Borrowing Base**", which is equal to 85% of the aggregate outstanding amount of Eligible Accounts (such lesser amount being, the "**Maximum Amount**"). The Borrower may draw down on the Loan by way of Advances; provided that, at no time shall the aggregate principal amount outstanding under the Loan exceed the Maximum Amount. Advances shall be made in Canadian Dollars and at the time and in the manner requested by the Borrower, subject to the fulfilment of all conditions precedent to the making of such Advances. The Borrower may borrow, repay and reborrow up to the Maximum Amount in compliance with the terms hereof. The Lender may create reserves against, or reduce its advance percentages based on Eligible Accounts without declaring a Default if it determines that such reserves or reduction is prudent, including, without limitation, to protect its interest in the Collateral and/or against diminution in the value of any Collateral, and/or to insure the prospect of payment or performance by the Borrower of its Obligations to the Lender are not impaired. The Borrowing Base formula set forth above is intended solely for monitoring purposes. The making of loans, advances, and credits by the Lender to the Borrower in excess of the above described Borrowing Base formula is for the benefit of the Borrower and does not affect the obligations of the Borrower hereunder; all such loans constitute Obligations and must be repaid by the Borrower in accordance with the terms of this Agreement.
- (b) Advances. Subject to the provisions hereof, the Borrower may request Advances under the Loan by delivering to the Lender a drawdown notice in the form attached as Schedule B before 1:00 p.m. Eastern Standard Time at least two (2) Business Days prior to the requested date of such Advance. The Borrower shall be permitted to draw Advances no more than once per week, subject to the terms of this Agreement. Each Advance by the Borrower shall be requested and made available in a minimum amount of not less than \$100,000 and in multiples of \$50,000 thereafter.



- (c) Overadvances. All Advances shall be added to and be deemed part of the Obligations when made. If, at any time and for any reason, the aggregate amount of the outstanding Advances under the Loan exceeds the Maximum Amount (an "**Overadvance**"), then the Borrower shall, upon demand by the Lender, immediately pay to the Lender, the amount of such Overadvance. Without affecting the Borrower's obligation to immediately repay to the Lender the amount of each Overadvance, the Borrower shall pay the Lender a fee (the "**Overadvance Fee**") in an amount to be agreed upon between the Lender and the Borrower, but not less than \$500.00 per occurrence of an Overadvance, plus interest on the Overadvance amount at the Default Rate.
- (d) Promissory Note. The obligation to repay the Loan hereunder shall be evidenced by a grid promissory note in respect of each Advance payable by the Borrower to the order of the Lender in form and substance satisfactory to the Lender (hereinafter referred to as the "**Promissory Note**").
- (e) Guarantors. In addition to providing the Guarantee, the Parent shall be required to ensure that all future subsidiaries of the Parent, within 10 days of creation or acquisition, provide a guarantee of the Obligations to the Lender, provided that, as at the Closing Date, the Lender agrees that no guarantee shall be required from Porterco or BearStone.
- (f) Term of Loan. The Loan shall be repaid on July [add], 2024 (the "**Maturity Date**"), subject to earlier repayment in accordance with the terms of this Agreement and the Promissory Note.
- (g) Purpose. All proceeds and Advances made under the Loan shall be used by the Borrower for the general working capital purposes of the Borrower.
- (h) Currency. The Borrower shall make payment relative to each Obligation in Canadian dollars. If the Borrower makes, or is required to make payment of any amount hereunder in a currency other than Canadian dollars (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction) (the "**Other Currency**"), such payment shall constitute a discharge of the liability of the Borrower hereunder in respect of the applicable amount owing only to the extent of the amount of Canadian dollars owed is actually received by the Lender on the date of receipt as determined by the Lender. If the amount of Canadian dollars which the Lender is able to purchase is less than the amount of Canadian dollars originally due in respect of the applicable payment, the Borrower shall indemnify and save the Lender harmless from and against any loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Lender and shall continue in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order. A certificate of the Lender as to any such loss or damage shall constitute prima facie evidence thereof, in the absence of manifest error.

## 2. REPAYMENT AND PREPAYMENTS OF LOAN

- (a) Repayment. Subject to the Lender's rights under Section 10, the Borrower shall, on the Maturity Date, repay all Obligations outstanding under this Agreement. On the Maturity Date, the commitment of the Lender to make Advances under the Loan shall terminate and any availability thereunder shall be immediately cancelled. The Maturity Date may be extended at the request of the Borrower with the consent of the Lender, at its sole discretion, for such period and on such terms as the Borrower and the Lender may agree.
- (b) Acceleration. Upon any acceleration of the Loan pursuant to this Agreement or any other Loan Document, the Borrower shall immediately repay all (or if only a portion is

accelerated thereunder, such portion of) the Loan then outstanding, including all accrued and unpaid interest thereon, plus the aggregate Fees then due and payable for the Loan and all other amounts owed under the Loan Documents.

- (c) Interest. Subject to Section 2(a) and Section 2(e) hereof, interest shall accrue at the Loan Rate on the outstanding principal balance of the Loan starting on the date of advance of the Loan to the Borrower and until all amounts under the Loan are repaid in full. Interest and repayment of the principal balance of the Loan shall be payable on or before the Maturity Date, in accordance with the terms of this Agreement and the Promissory Note. In no event will the Lender charge, or will the Borrower be liable to pay interest at a rate that exceeds the highest rate of interest permissible under Applicable Law, or that is not in compliance with any applicable usury laws. Any excess interest shall be adjusted as set forth in the Promissory Note. If any payment due hereunder is not received within five (5) days of its due date, the Borrower shall incur and shall be liable to pay a late charge equal to five (5) percent of the amount in arrears.
- (d) Fees. In consideration of the Lender's entering into this Agreement, the Borrower shall pay to the Lender the following fees:
- (i) a one-time setup fee of US\$3,000 for the monitoring of collateral, on the Closing Date;
  - (ii) a monthly collateral monitoring fee of US\$1,500.00 to be paid on the first of each month;
  - (iii) an annual facility fee due on July [add], 2020, July [add], 2021, July [add], 2022 and July [add], 2023, which shall be equal to 0.5% of the Maximum Amount on such payment date (the "**Facility Fee**"); and
  - (iv) an unused line fee equal to 0.5% per annum (but calculated based on the actual number of days elapsed) of the difference between the Maximum Amount and the average Daily Balance of outstanding Advances during such month, which will accrue from the Closing Date and will be paid monthly in arrears on the first Business Day of each month (the "**Unused Fee**").

The foregoing, together with any Breakage Costs and Overadvance Fees, are herein referred to as the "**Fees**". The Facility Fee shall be deemed to have been fully earned upon the execution hereof. No portion of the Facility Fee is refundable to the Borrower. No portion of the Unused Fee is refundable to the Borrower.

- (e) Default Rate. Effective upon the occurrence of any Default and for so long as any Default shall be continuing: (i) the Loan Rate shall automatically be increased by a nominal amount equal to three (3) percent per annum (such increased rate, the "**Default Rate**"); and (ii) all outstanding Obligations, including unpaid interest, shall continue to accrue interest from the date of such Default at the Default Rate applicable to such Obligations.
- (f) Payment Date. If any payment to the Lender under this Agreement becomes due and payable on a day other than a Business Day, such payment date shall be extended to the next succeeding Business Day (unless such next succeeding Business Day is in the next calendar month, in which case such payment date shall be the immediately preceding Business Day) and the interest portion of such payment shall be calculated at the then applicable rate during such extension, provided that for greater certainty, if such next Business Day is in the succeeding calendar month and the payment is made on the immediately preceding Business Day, there shall be no change in the payment amount.

- (g) Interest Act (Canada). Solely for purposes of the Interest Act (Canada): (1) whenever interest is to be computed or expressed at any rate (the "**Specified Rate**") on the basis of a year of less than 365 days or any other period of time less than a calendar year hereunder, the annual rate of interest to which each such Specified Rate is equal is such Specified Rate multiplied by a fraction, the numerator of which is the actual number of days in the applicable year and the denominator of which is 360 or such other period of time, respectively; (2) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder; and (3) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.
- (h) Payment by Wire Transfer. The Borrower shall make each payment under this Agreement without set-off, counterclaim or deduction and free and clear of all Taxes not later than 1:00 p.m. Eastern Standard Time, on the day when due in lawful money of Canada by wire transfer of immediately available funds to such account as the Lender shall specify from time to time in writing. If the Borrower shall be required by law to deduct any Taxes from any payment to the Lender under any Loan Document, then the amount payable to the Lender shall be increased so that, after making all required deductions, the Lender receives an amount equal to that which it could have received had no such deductions been made. For purposes of computing interest and fees, any payments received after 1:00 p.m. Eastern Standard Time, shall be deemed received by the Lender on the next Business Day.
- (i) Application of Payments. The Borrower irrevocably agrees that the Lender shall have the continuing and exclusive right to apply any and all payments against the then due and payable Obligations in such order as the Lender may deem advisable. The Lender is authorized to, and at its option may (without prior notice or precondition and at any time or times), but shall not be obligated to, make or cause to be made Advances on behalf of the Borrower for: (1) payment of all reasonable fees, expenses, indemnities, charges, costs, principal, interest, or other Obligations owing by the Borrower under this Agreement or any of the other Loan Documents, (2) the payment, performance or satisfaction of any of the Borrower's obligations hereunder with respect to preservation of the Collateral, or (3) any premium in whole or in part required in respect of any of the policies of insurance required by this Agreement, even if the making of any such Advance causes the outstanding balance of the Loan to exceed the Maximum Amount and the Borrower agrees to repay immediately, in cash, any amount by which the Loan exceeds the Maximum Amount.
- (j) Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other governmental authority affects or would affect the amount of capital required or expected to be maintained by the Lender or any Person controlling the Lender, and the Lender determines that the rate of return on its or such controlling Person's capital as a consequence of making its Loan is reduced to a level below that which the Lender or such controlling Person could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by the Lender to the Borrower, the Borrower shall immediately pay directly to the Lender additional amounts sufficient to compensate the Lender or such controlling Person for such reduction in rate of return. A statement of the Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.
- (k) Reduction of Facility. The Borrower shall have the right at any time and from time to time to reduce the Maximum Amount of the Loan, provided that the Borrower gives notice to the Lender three Business Days prior to such reduction, and provided further provided that any such reduction is accompanied by the payment of a fee equal to 3% of the

reduced amount. Upon payment of such fee, the Lender shall confirm in writing the reduction of the Maximum Amount under this Agreement.

### 3. ACCOUNTS AND COLLECTIONS

- (a) Collections Account. In connection with this Agreement, the Borrower has established an account (the "**Collections Account**") with the Bank that is subject to a deposit account control agreement ("**Collections Account DACA**") among the Lender, the Borrower and the Bank. The Collections Account DACA establishes that the Borrower shall have no rights of withdrawal under the Collections Account. To the extent that any payment received in the Collections Account exceeds the then Daily Balance, the Lender shall promptly cause the amount of such excess to be transferred to the Disbursement Account.
- (b) Disbursement Account. In connection with this Agreement, the Borrower has established an account (the "**Disbursement Account**") with the Bank that is in the Borrower's name, but subject to a deposit account control agreement ("**Disbursement Account DACA**") among the Lender, the Borrower and the Bank. The Disbursement Account DACA establishes that, upon the Lender's notice to the Bank that a Default has occurred, the Borrower shall have no rights of withdrawal under the Operating Account. The Lender shall not exercise its rights pursuant to the Collections Account DACA (other than rights related to viewing the account and receiving reports) unless a Default has occurred and is continuing.
- (c) Collection of Accounts. The Borrower shall notify all Account debtors and other obligors of the Borrower to remit payments on Accounts and other Collateral directly to the Collections Account. All notices to Account debtors shall be in such form as shall be required by the Lender. If, notwithstanding said notice, the Borrower obtains payment on any Account or other Collateral, including, without limitation, collections under credit card sales, the Borrower shall receive all such payments on Accounts and other Collateral and other proceeds, including cash, in trust for the Lender and immediately deliver said payments to the Lender in their original form as received from the Account debtor or other obligor, together with any necessary endorsements.

The Lender or its agent may, at any time, on notice to the Borrower, (i) notify customers or Account debtors or other obligors of the Borrower that the Accounts or other Collateral have been assigned to the Lender, and that the Lender has a security interest in them, (ii) collect the Accounts and other Collateral directly and (iii) add the collection costs and expenses to the Obligations.

- (d) Crediting Payments. The receipt of any item of payment in the Collections Account shall, for the sole purpose of determining availability under the Loan, subject to final payment of such item, be provisionally applied to reduce the Obligations on the date of receipt of such item in the Collections Account, but the receipt of such an item of payment shall for all other purposes in determining the Daily Balance, including without limitation for the purpose of calculation of interest on the Obligations, not be deemed to have been paid to the Lender until three (3) Business Days after the date of the receipt of such item of payment. Notwithstanding anything to the contrary contained herein, payments received in the Collections Account after 1:00 p.m. Eastern Standard Time shall be deemed to have been received by the Lender as of the opening of business on the immediately following Business Day.

### 4. SECURITY

As security for the payment as and when due of the indebtedness of the Borrower to the Lender hereunder and under the Promissory Note (and any renewals, extensions and modifications thereof) and

under any other agreement or instrument, both now in existence and hereafter created (as the same may be renewed, extended or modified), and the performance and payment as and when due of all other Obligations of the Borrower to the Lender, both now in existence and hereafter created (as the same may be renewed, extended or modified), each of the Loan Parties hereby grant to the Lender a security interest in all present and after acquired personal and real property of such Loan Party, and all replacements, substitutions and exchanges therefor and thereof and accessions thereto and any and all insurance and/or other proceeds thereof (all of the foregoing collectively, the "**Collateral**"). The Lender agrees, upon full repayment of the Loan in accordance with the terms hereof or the terms of the Promissory Note or any disposition of Collateral otherwise permitted by this Agreement, and provided that no Default exists hereunder or under any other agreement between the Lender and the Borrower, that it shall forthwith release its security interest and any cross-collateralization of the applicable item of collateral. Each Loan Party agrees that, with respect to the Collateral, the Lender shall have all of the rights and remedies of a secured party under the PPSA. The Lender may require each Loan Party, and each Loan Party agrees, to execute and deliver security documents granting liens in the Collateral in which it has an interest in favour of the Lender but the Lender shall have no obligation to formalize or perfect its security beyond this Agreement. Each Loan Party hereby authorizes the Lender to file financing statements under the PPSA ("**Financing Statements**") describing the Collateral. Without the Lender's prior written consent, each Loan Party agrees not to file any corrective or termination statements or partial releases with respect to any Financing Statements filed by the Lender pursuant to this Agreement. Each Loan Party hereby waives any and all rights such Loan Party has or may have under Section 43 of the PPSA to receive a copy of any financing statement or financing change statement filed by or for the Lender or any verification statement in respect thereof.

#### 5. CONDITIONS PRECEDENT TO EFFECTIVENESS

The obligation of the Lender to make the Loan as set forth in Section 1 hereof is expressly conditioned upon compliance by the Loan Parties, to the reasonable satisfaction of the Lender and its counsel, of the following conditions precedent. On or prior to the date of an initial Advance, the Loan Parties shall provide, or cause to be provided, to the Lender the following:

- (a) A duly executed copy of this Agreement.
- (b) Resolutions of the Board of Directors of each Loan Party, certified by the Chief Financial Officer or another duly appointed officer of such Loan Party, duly authorizing, in the case of the Borrower, the borrowing of funds hereunder and, as applicable, the execution, delivery and performance of this Agreement, the Promissory Note, the Guarantee, and all related instruments and documents.
- (c) A certificate executed by the Chief Financial Officer or another duly appointed officer of each Loan Party, certifying that the representations and warranties of such Loan Party contained in this Agreement are true and correct as of the Closing Date, and that no Default or Pending Default or event which, with the giving of notice or the lapse of time, or both, would become a Default or Pending Default hereunder, has then occurred, and that no event has occurred since December 31, 2018 which would have a Material Adverse Effect other than the BearStone Receivership.
- (d) Evidence satisfactory to the Lender as to due compliance by the Loan Parties with the insurance provisions of Section 8(g) hereof.
- (e) An original Guarantee duly executed on behalf of the Parent.
- (f) An original Promissory Note relating to the Loan duly executed on behalf of the Borrower, pursuant to Section 1 hereof.

- (g) Subordination of security pursuant to all seller, shareholder and Affiliate debt and officer loans to the Loan Parties, if applicable.
- (h) Payment of all fees, including but not limited to the Fees due and payable under this Agreement.
- (i) After giving effect to any Advance on the Closing Date, there must be a minimum excess availability of \$150,000.00 under the Loan.
- (j) A Borrowing Base certificate of the Borrower, in a form acceptable to the Lender.
- (k) A master customer list of the Borrower, in a form acceptable to the Lender.
- (l) A duly executed copy of the Collections Account DACA and Disbursement Account DACA from the Borrower and the Bank, in a form acceptable to the Lender.
- (m) Such bills of sale, no interest letters, authorizations to discharge and discharges or subordination agreements shall have been obtained and such filings shall have been made and other actions taken as reasonably may be required by the Lender and its counsel to perfect a valid, first priority security interest granted by the Loan Parties to the Lender with respect to the Collateral.

#### 6. CONDITIONS PRECEDENT TO EACH ADVANCE

On or before the date of each Advance hereunder, the following conditions shall be satisfied:

- (a) no material adverse change in the financial condition or operations of the Borrower shall have occurred after the Closing Date;
- (b) no Default or Pending Default has occurred and is continuing or will occur as a result of the Advance;
- (c) each of the representations and warranties herein is true and correct as of the date of such Advance, except to the extent that such representations and warranties relate to an earlier date, in which case such representations and warranties were true and correct on and as of such earlier date; and
- (d) receipt by the Lender of a drawdown notice in the form attached hereto as Schedule B.

#### 7. REPRESENTATIONS AND WARRANTIES

Each Loan Party hereby represents and warrants for and on behalf of itself to the Lender that:

- (a) Business Existence. It has the form of business organization, and is duly organized and validly existing in good standing under the laws of the jurisdiction, specified below its signature on the signature page of this Agreement, and is duly qualified and authorized to transact business and is in good standing wherever necessary to perform its obligations under the Loan Documents to which it is a party, including each jurisdiction in which the Collateral in which it has an interest is located.
- (b) Requisite Power and Authority. It has the requisite power and authority to own or hold under lease its properties and to enter into and perform its obligations hereunder; and in case of the Borrower, the borrowing hereunder by the Borrower from the Lender, and the execution and delivery by it and the performance of its obligations under the Loan Documents to which it is a party: (1) have been duly authorized by all necessary action

consistent with such Loan Party's form of organization; (2) do not require any approval or consent of any shareholder or holders of any indebtedness or obligations of such Loan Party except such as have been duly obtained; and (3) do not and will not contravene any law, governmental rule, regulation or order now binding on such Loan Party, or the organizational documents of such Loan Party, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon the property of such Loan Party under any agreement to which such Loan Party is a party or by which it or its property is bound.

- (c) No Consents or Approvals. Neither the execution and delivery by it of the Loan Documents to which it is a party, nor the consummation of any of the transactions by such Loan party contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, provincial or foreign governmental authority or agency, except as provided herein.
- (d) Enforceability. This Agreement constitutes, and all other Loan Documents to which it is a party when entered into by it will constitute, its legal, valid and binding obligations, enforceable against such Loan Party in accordance with the terms hereof and thereof, except as limited by applicable bankruptcy, insolvency, receivership, moratorium or similar laws or equitable principles relating to or affecting the enforcement of creditors' rights generally, and by Applicable Laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein and therein.
- (e) Litigation. There are no pending or threatened actions or proceedings to which it is a party, and there are no other pending or threatened actions or proceedings of which it has knowledge, before any court, arbitrator or administrative agency, which, either individually or in the aggregate, would have a Material Adverse Effect. Further, it is not in default under any material obligation for the payment of borrowed money, for payment to any trade creditors or service providers, for the deferred purchase price of property or for the payment of any rent which, either individually or in the aggregate, which default would have a Material Adverse Effect.
- (f) Validity and Priority of Security Interest. Upon satisfaction of the conditions precedent in Section 5 hereof and advance by the Lender of the applicable Advance, it will have good and marketable title to the Collateral in which it has an interest, free and clear of all Liens and encumbrances (excepting only Permitted Liens) and the Lender will have a valid, perfected, first priority security interest in such item of Collateral (subject to Permitted Liens). In the case of any Collateral purchased by it using the Loan then, upon the last to occur of: (1) delivery of the applicable item of Collateral, (2) payment to the vendor of the acquisition cost of such item of Collateral, (3) advance by the Lender of the Loan relating to such item of Collateral, and (4) filing in the appropriate public office of a Financing Statement naming it as debtor, and the Lender as secured party, and describing such item of Collateral, all in compliance with the provisions of the PPSA, the Lender will have a valid, perfected, first priority purchase money security interest in such item of Collateral (subject to Permitted Liens).
- (g) Financial Statements. The financial statements of such Loan Party (copies of which have been furnished to the Lender) have been prepared in accordance with GAAP, and fairly present in all material respects each Loan Party's consolidated financial condition and the results of each Loan Party's operations as of the date of and for the period covered by such statements, and since the date of such statements there has been no Material Adverse Effect on such conditions or operations other than the BearStone Receivership.
- (h) Tax Returns and Payments. It has filed or has caused to have been filed all federal, provincial and local tax returns which, to its knowledge, are required to be filed by it, and

has paid or caused to have been paid all taxes as shown on such returns or on any assessment received by it, to the extent that such taxes have become due, unless and to the extent only that such taxes, assessments and governmental charges are currently contested in good faith and by appropriate proceedings by it and adequate reserves therefor have been established as required under GAAP.

- (i) No Violation of Law. It is not in violation of any law, ordinance, governmental rule or regulation to which it is subject and the violation of which would have a Material Adverse Effect, and it has obtained any and all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its properties and the conduct of its business, except where the failure to obtain such license, permit, franchise or governmental authorization would not have a Material Adverse Effect.
- (j) Business Information. Its legal name, jurisdiction of organization and Corporate Access Number specified on the signature page hereof is true and correct and its address on such signature page is the address of its chief executive office. Within the previous six (6) years, it has not changed its name, done business under any other name, or merged or been the surviving entity of any merger, except as disclosed to the Lender in writing or as previously disclosed to the Lender.
- (k) Full Disclosure. No information relating to it contained in any Loan Document or any written statement or document furnished by or on behalf of such Loan Party under any Loan Document, or to induce the Lender to execute the Loan Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.
- (l) Subsidiaries. The only subsidiaries of the Parent on the Closing Date are the Borrower, Porterco and BearStone. As at the Closing Date, Porterco has no assets or operations.

## 8. COVENANTS OF LOAN PARTIES

Each Loan Party, as applicable, covenants and agrees as follows:

- (a) Application of Proceeds. The Borrower shall use the proceeds of the Loan exclusively for the purposes set forth in Section 1(g).
- (b) Use of Collateral. It shall cause the Collateral in which it has an interest to be used solely in the Provinces of Alberta, British Columbia and Saskatchewan or in any other jurisdiction in respect of which the Lender has given its prior written consent (which consent shall not be unreasonably withheld), and in the conduct of its business and in a careful and proper manner; shall not permanently discontinue use of the Collateral unless it otherwise maintains such Collateral in accordance with the provisions of this Agreement; and shall provide written notice to the Lender not more than thirty (30) days after any change of the location of any item of Collateral (or the location of the principal base of any item of Collateral, to the extent that such item is mobile equipment).
- (c) No Sale or Further Encumbrance. Except in the ordinary course of its business, including without limitation in respect of the disposition of worn out, damaged or obsolete Collateral, or as otherwise consented to by the Lender, it shall not dispose of its interest in the Collateral without the prior written consent of the Lender, and such disposition shall be on arm's length terms and for full market value. It shall maintain the Collateral in which it has an interest free from all claims, Liens and legal processes of its creditors other than:



- (i) Liens for fees, taxes, or other governmental charges of any kind which are not yet delinquent or are being contested in good faith by appropriate proceedings which suspend the collection thereof (provided, however, that such proceedings do not involve any substantial danger of the sale, forfeiture or loss of the Collateral or any interest therein);
- (ii) Liens of mechanics, materialmen, laborers, employees or suppliers and similar Liens arising by operation of law incurred by such Loan Party in the ordinary course of business for sums that are not yet delinquent or are being contested in good faith by negotiations or by appropriate proceedings which suspend the collection thereof (provided, however, that such contest does not involve any substantial danger of the sale, forfeiture or loss of the Collateral or any interest therein);
- (iii) Liens arising out of any judgments or awards against such Loan Party which have been adequately bonded to protect the Lender's interests or with respect to which a stay of execution has been obtained pending an appeal or a proceeding for review;
- (iv) Liens arising merely by operation of law in the ordinary course of business of the Loan Party, consented to in writing by the Lender, such consent not to be unreasonably withheld;
- (v) Liens arising from any seller, shareholder and Affiliate debt and officer loans to the Loan Parties, provided that such liens are subordinated to the Lender in writing, in a form satisfactory to the Lender;
- (vi) All Liens created by or in favour of the Lender, including pursuant to this Agreement;
- (vii) Liens arising in connection with capital leases or "purchase-money security interests" (as that term is defined in the *Personal Property Security Act* (Alberta) or the equivalent thereto under the applicable law if (i) the principal amount of indebtedness, obligations or liabilities secured thereby does not exceed \$1,500,000, in aggregate, for all Loan Parties at the time such encumbrances are created, incurred or assumed, and (ii) no Default or Pending Default exists at the time such encumbrances are created, incurred or assumed; and
- (viii) Liens in respect of which the Lender has given its written consent,  
  
(collectively, "**Permitted Liens**").

Each Loan Party shall notify the Lender promptly upon receipt by it of notice of any Lien, attachment or judicial proceeding affecting the Collateral in which it has an interest in whole or in part.

- (d) Fees and Taxes. It will, at its own expense, pay or cause to be paid all taxes and fees relating to its ownership and use of the Collateral in which it has an interest. The Borrower will keep and maintain, or cause to be kept and maintained, the Collateral in at least as good operating condition as on the date of execution hereof (or on the date on which acquired, if such date is subsequent to the date of execution hereof), provided that any improvements to the Collateral or improvements to the standard of maintenance of such Collateral shall form the minimum condition or standard of maintenance on a go forward basis except for ordinary wear and tear resulting from proper use thereof. It will provide all maintenance and service and make all repairs necessary for such purpose. In

addition, if any parts or accessories forming part of such Collateral shall from time to time after the date hereof become worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, such Loan Party, at its own expense, will within a reasonable time replace such parts or accessories or cause the same to be replaced, with replacement parts or accessories which are free and clear of all Liens, encumbrances or rights of others and have a value and utility at least equal to the parts or accessories replaced. All accessories, parts and replacements for or which are added to or become attached to the Collateral shall immediately be deemed incorporated in the Collateral and subject to the security interest granted by such Loan Party herein.

- (e) Loss or Damage. It shall advise the Lender in writing within ten (10) days of the occurrence of any material damage, loss, theft, destruction or governmental confiscation or appropriation of any item of the Collateral in which it has an interest (an "**Event of Loss**") and of the circumstances and extent of such Event of Loss and, within thirty (30) days after receipt of notice from the Lender, it shall (at the Lender's option) either: (1) replace the item of Collateral having suffered the Event of Loss with collateral which is free and clear of all Liens (other than Permitted Liens) and has a value and utility at least equal to the item of Collateral having suffered the Event of Loss, and such replacement collateral shall immediately be deemed "Collateral" hereunder and subject to the security interest granted pursuant to Section 3 hereof; (2) prepay the Obligations to the extent attributable to the unpaid portion of the Obligations funded with respect to the item of Collateral having suffered the Event of Loss (as reasonably determined by the Lender); or (3) the Lender shall retain any payments received under Section 8(g) below, provided such payments cover the value of the item of Equipment having suffered the Event of Loss. If any item of Collateral is damaged and such damage can be repaired, each Loan Party shall (at their expense) promptly effect such repairs. Proceeds of insurance shall be paid to the Lender with respect to such reparable damage to the Collateral and shall, at the election of the Lender, be applied either to the repair of the Collateral by payment by the Lender directly to the party completing the repairs, or to the reimbursement of each Loan Party for the cost of such repairs; provided, however, that the Lender shall have no obligation to make such payment or any part thereof until receipt of such evidence as the Lender shall deem satisfactory that such repairs have been completed, and further provided that the Lender may apply such proceeds to the payment of any installment or other sum due or payable.
- (f) Personal Property. The parties intend that the Collateral shall remain personal property, notwithstanding the manner in which it may be affixed to any real property, and each Loan Party shall obtain and deliver to the Lender (to be recorded at such Loan Party's expense) from each Person having an interest in or Lien on the property (the "**Premises**") where such Collateral in which it has an interest is to be located, waivers of any Lien, encumbrance or interest which such Person might have or hereafter obtain or claim with respect to such Collateral.
- (g) Insurance. At its own expense, it shall keep the Collateral which is of a character usually insured by Persons similarly situated to it in which it has an interest or cause such Collateral to be kept insured against loss or damage due to fire and the risks normally included in extended coverage, malicious mischief and vandalism, for the full replacement value thereof. All insurance for loss or damage shall provide that losses, if any, shall be payable to the Lender under a lender's loss payee endorsement, which shall be evidenced by adding the Lender as a first loss payee in respect of the Collateral on the certificate of insurance of each Loan Party. The proceeds of such insurance payable as a result of loss of or damage to the Collateral shall be applied, at the Lender's option, (x) toward the replacement, restoration or repair of the Collateral which may be lost, stolen, destroyed or damaged, or (y) toward payment of the balance outstanding on the Promissory Note or the Obligations. In addition, each Loan Party shall also carry public liability insurance, both personal injury and property damage. All insurance

required hereunder shall be in form and amount and with companies satisfactory to the Lender, acting reasonably. Loan Parties shall pay or cause to be paid the premiums therefor and deliver to the Lender evidence satisfactory to the Lender of such insurance coverage. Loan Parties shall cause to be provided to the Lender, prior to the scheduled expiration or lapse of such insurance coverage, evidence satisfactory to the Lender of renewal or replacement coverage. Each insurer shall agree, by endorsement upon the policy or policies issued by it, or by independent instrument furnished to the Lender, that (1) it will give the Lender thirty (30) days' prior written notice of the effective date of any material alteration or cancellation of such policy; and (2) the interest of any named loss payee other than Loan Parties shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Loan Parties with respect to such policy or policies.

- (h) Further Assurances. It shall promptly and duly execute and deliver to the Lender such further documents, instruments and assurances and take such further action as the Lender may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created in favor of the Lender hereunder; including, without limitation, the addition of any Affiliate of either of the Loan Parties as a guarantor, and the execution and delivery of any document reasonably required, and payment of all necessary costs to record such documents (including payment of any documentary or stamp tax), to perfect and maintain perfected the security interest granted by it under this Agreement.
- (i) Notices to Lender. It shall provide written notice to the Lender: (1) not less than thirty (30) days prior notice of any change in its name, jurisdiction of organization or address of its chief executive office; and (2) promptly upon the occurrence of any event which constitutes a Default or Pending Default.
- (j) Delivery of Financial Information. Parent shall furnish the Lender (1) within one hundred twenty (120) days after the end of each fiscal year of Parent, its consolidated balance sheet as at the end of such year, and the related consolidated statement of income and statement of changes in financial position for such fiscal year, prepared in accordance with GAAP, all in reasonable detail and certified by independent certified public accountants of recognized standing selected by Parent and reasonably acceptable to the Lender; (2) within sixty (60) days after the end of each quarter of Parent's fiscal year (other than the fourth quarter), its unaudited consolidated balance sheet as at the end of such quarter and the related consolidated statement of income and statement of changes in financial position for such quarter, prepared in accordance with GAAP; and (3) within thirty (30) days after the date on which they are filed, all material reports, forms and other filings required to be made by Parent (or the Borrower) to any recognized stock exchange or other securities regulatory body under whose jurisdiction or policies, such person is regulated or to which such person is otherwise subject if any, as and when filed (by furnishing these such forms or filings, or making them publicly available in electronic form, in each case, within the time periods set forth in clauses (1) and (2), Parent shall be deemed to have satisfied the requirements of clauses (1), (2) and (3)).
- (k) Notice of Bankruptcy. It shall provide written notice to the Lender of the commencement of proceedings under any and all bankruptcy, insolvency, receivership, reorganization or similar laws under Applicable Law (as now or hereafter in effect) involving it, and, in the case of the Parent, any direct or indirect subsidiary of the Parent as a debtor.
- (l) Bank Secrecy Act, etc. (1) It has been advised by the Lender that the USA Patriot Act establishes minimum standards of account information to be collected and maintained by the Lender, and that to help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account; and specifically,

this means that when such Loan Party executes this Agreement, the Lender may ask for such Loan Party's name and address, the date of birth of the officers executing this Agreement, and other information that will allow the Lender to identify such Loan Party; and that the Lender may also ask to see the driver's license or other identifying documents of the officers executing this Agreement on behalf of such Loan Party. (2) It is and will remain in full compliance with all Applicable Laws including, without limitation, (i) ensuring that no Person who owns a controlling interest in or otherwise controls such Loan Party is or shall be (A) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control ("**OFAC**"), Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation, or (B) a Person designated under Sections 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders, and (ii) compliance with all applicable Bank Secrecy Act ("**BSA**") laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations.

- (m) Indemnification. On a joint and several basis with each other Loan Party, it shall indemnify (on an after-tax basis) and defend the Lender, its successors and assigns, and their respective directors, officers and employees, from and against any and all claims, actions and suits (including, without limitation, any Environmental Claim or Environmental Loss), and related attorneys' fees, of any kind, nature or description whatsoever arising, directly or indirectly, in connection with any of the Collateral (other than such as may result from the gross negligence or willful misconduct of the Lender, its successors and assigns, and their respective directors, officers and employees). The obligations of each Loan Party under this Section 8(m) shall survive the expiration of the term of this Agreement.
- (n) Annual Equipment Appraisals. The Borrower shall permit and enable the Lender and all other Persons designated by the Lender, to attend the premises to perform an annual physical inspection of all Collateral that is equipment in which it has an interest and to obtain an appraisal report in form and substance reasonably satisfactory to the Lender at the cost of the Loan Parties.
- (o) Collateral Reporting. The Borrower shall provide (i) daily invoices and collections reports to the Lender, (ii) a weekly detailed open accounts receivable aging, which shall have unique customer account numbers, and (iii) a weekly accounts payable reporting. Within ten (10) days of the end of each month, the Borrower shall provide a reconciliation of accounts receivable aging to its general ledger and the collateral statement of account. Upon request by the Lender, the Borrower shall provide an up to date master customer list.
- (p) Audit Fee. It shall permit and enable the Lender and all Persons designated by the Lender, to examine all books and records of such Loan Party up to four times per year, or more frequently upon a Default. The cost of such examination shall be based on a standard daily rate, as set by the Lender from time to time.
- (q) Cash Management. The Borrower shall remit and shall cause all Proceeds of the Collateral to be directly remitted to the Collections Account.
- (r) Monitoring of Accounts. The Borrower shall make arrangements to permit the Lender viewing rights to all bank accounts maintained by the Borrower. The Borrower will provide to the Lender and/or the Lender's agent all passwords and access information with respect to any depository account owned by it or maintained for its benefit such that the Lender and its agent shall be able to review and access each such account in the same manner as the Borrower.

- (s) No Other Accounts. The Borrower shall not hold any deposit accounts with any bank or lender for any purpose, other than the Collections Account and the Disbursement Account with the Bank, which are subject to the Collections Account DACA and the Disbursement Account DACA, respectively.
- (t) Subsidiaries. The Parent shall not permit Porterco to own any assets or undertake any operations, unless agreed to in writing by the Lender.
- (u) No Merger. The Borrower shall not, without the prior written consent of the Lender, (i) merge or consolidate with any other Person, or (ii) purchase all or substantially all of the assets of any other Person.
- (v) Investments and Loans. The Borrower shall not make or suffer to exist any investments in, or loans or advances to, any other Person except (a) advance payments or deposits against purchases made in the ordinary course of business; (b) any existing investments in, or existing advances to, any Affiliate thereof; (c) advances to the Parent; or (d) temporary advances to employees to cover expenses incurred in the ordinary course of business.
- (w) Dividends or Distributions. Other than as consented to by the Lender in writing, the Borrower shall not pay or declare any dividends or distributions in cash or other property other than to the Parent.
- (x) Transactions with Affiliates. The Borrower shall not be a party to, directly or indirectly, any transaction (including any lending transaction or other transaction involving the advance of money) with any Affiliate of any Loan Party other than the Parent, except in the ordinary course of business and on terms that are (a) no less favorable to such Loan Party than those which might be obtained at the time from Persons who are not Affiliates of any Loan Party, and (b) in accordance with standard industry practices.
- (y) Compliance with Environmental Law. No Loan Party will, and no Loan Party will permit any occupant of any real property owned or leased by such Loan Party to, (a) act in any manner that would violate any Environmental Law or bring any of such properties in violation of any Environmental Law, (b) use any of such properties or any portion thereof for the handling, processing, storage or disposal of Hazardous Substances in violation of any Environmental Law, (c) cause or permit to be located at any of such properties any underground tank or other underground storage receptacle for Hazardous Substances, (d) generate any Hazardous Substances at any of such properties in violation of any Environmental Law, or (e) conduct any activity at any of such properties in any manner so as to cause a release or threatened release of Hazardous Substances on, upon or into any of such properties in violation of any Environmental Law or to cause any Environmental Contamination.

9. DEFAULT.

A default shall be deemed to have occurred hereunder (a "**Default**") upon the occurrence of any of the following events:

- (a) if the Borrower fails to make any payment of principal and/or interest when due hereunder or under the Promissory Note;
- (b) if the Borrower fails to make any payment of any Fees or an amount when due hereunder or under the Promissory Note (other than a payment described in paragraph (a)) and such default continues for at least five (5) days after written notice to the Borrower thereof;

- (c) the failure by any Loan Party to maintain, use or operate the Collateral in compliance with Applicable Law;
- (d) if the Borrower fails to perform its obligations under Section 8(c) and Section 8(g) and such default continues for at least five (5) days after written notice to the Borrower thereof;
- (e) the occurrence of a payment or other default by the Borrower or its Affiliates under any loan, lease, agreement, guarantee or other financial obligation to the Lender or its Affiliates which default entitles the other party to such obligation to exercise any remedies;
- (f) the occurrence of a payment or other default by the Borrower or its Affiliates under any material loan, lease, guarantee or other material financial obligation to any third party which default has been declared;
- (g) if any representation or warranty made by a Loan Party in any financial statement or Loan Document proves to be false or misleading, including any omission of any substantial contingent or unliquidated liability or claim against a Loan Party;
- (h) the failure by a Loan Party generally to pay its debts as they become due or its admission in writing of its inability to pay the same, or the commencement of any bankruptcy, insolvency, receivership or similar proceeding by or against a Loan Party or any of its properties or business (unless, if involuntary, the proceeding is dismissed within sixty (60) days of the filing thereof) or the rejection of this Agreement or any other Loan Document in any such proceeding;
- (i) a Loan Party shall (1) enter into any transaction of merger or amalgamation with another Person (such actions being referred to as an “**Event**”), unless such Loan Party is the surviving entity or the surviving entity is organized and existing under the laws of the Canada or any province of Canada, and prior to such Event: (A) such Person executes and delivers to the Lender (x) an agreement satisfactory to the Lender, in its sole discretion, containing such Person's effective assumption, and its agreement to pay, perform, comply with and otherwise be liable for, in a due and punctual manner, all of such Loan Party 's Obligations having previously arisen, or then or thereafter arising, under any and all of the Loan Documents to which it is a party, and (y) any and all other documents, agreements, instruments, certificates, opinions and filings requested by the Lender; and (B) the Lender is satisfied as to the creditworthiness of such Person, and as to such Person's conformance to the other standard criteria then used by the Lender when approving transactions similar to the transactions contemplated in this Agreement; (2) cease to do business as a going concern, liquidate, or dissolve; or (3) sell, transfer, or otherwise dispose of all or substantially all of its assets or property;
- (j) effective control of the Borrower's voting capital stock/membership interests/partnership interests, issued and outstanding from time to time, is not retained by the present holders (unless the Borrower shall have provided thirty (30) days' prior written notice to the Lender of the proposed disposition and the Lender shall have consented thereto in writing);
- (k) there occurs a default or anticipatory repudiation under any guarantee executed in connection with this Agreement;
- (l) there occurs a breach by either Loan Party of Section 8(j) of this Agreement; or

- (m) breach by either Loan Party of any other covenant, condition or agreement (other than those in items (a)-(l) above) under this Agreement or any of the other Loan Documents that continues for thirty (30) days after the Lender's written notice to the Borrowers (but such notice and cure period will not be applicable unless such breach is curable by practical means within such notice period).

Notwithstanding anything to the contrary set forth herein, the Lender or its assignee(s) (as applicable) may exercise all rights and remedies hereunder or under the Promissory Note independently with respect to the Collateral.

## 10. REMEDIES.

Upon the occurrence of a Default which is continuing, the Lender may, at its option, declare this Agreement to be in default and accelerate all Obligations hereunder and may do any one or more of the following, all of which are hereby authorized by the Loan Parties:

- (a) Rights Under PPSA. Exercise any and all rights and remedies of a secured party under the PPSA or otherwise under Applicable Law and in addition to those rights, at its sole discretion, may require each Loan Party (at their sole expense) to forward promptly any or all of the Collateral in which it has an interest to the Lender at such location as shall reasonably be required by the Lender, or enter upon the premises where any such Collateral is located (without obligation for rent) and take immediate possession of and remove the Collateral by summary proceedings or otherwise, all without liability from the Lender to the Loan Parties for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise.
- (b) Disposition of Collateral. Subject to Applicable Law, and any right of either Loan Party to redeem the Collateral, sell, lease or otherwise dispose of any or all of the Collateral in a commercially reasonable manner at public or private sale with notice to the Loan Parties (the parties agreeing that ten (10) days' prior written notice shall constitute adequate notice of such sale) at such price as it may deem best, for cash, credit, or otherwise, with the right of the Lender to purchase and apply the proceeds:

First, to the payment of all expenses and charges, including the expenses of any sale, lease or other disposition, the expenses of any taking, attorneys' fees, court costs and any other expenses incurred or advances made by the Lender in the protection of its rights or the pursuance of its remedies, and to provide adequate indemnity to the Lender against all taxes and Liens which by law have, or may have, priority over the rights of the Lender to the monies so received by the Lender;

Second, to the payment of the Obligations; and

Third, to the payment of any surplus thereafter remaining to the respective Loan Party or to whosoever may be entitled thereto;

and in the event that the proceeds are insufficient to pay the amounts specified in clauses "First" and "Second" above, the Lender may collect such deficiency from either Loan Party.

- (c) Other Rights and Remedies. The Lender may exercise any other right or remedy available to it under the Loan Documents or Applicable Law, or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement in whole or in part.
- (d) Costs and Expenses; No Remedy Exclusive. In addition, the Loan Parties shall be liable for any and all reasonable unpaid additional sums due hereunder or under the

Promissory Note before, after or during the exercise of any of the foregoing remedies; and for all reasonable legal fees and other reasonable costs and expenses incurred by reason of any Default or of the exercise of the Lender's remedies with respect thereto. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative, and shall be in addition to any other remedy referred to above or otherwise available at law or in equity, and may be exercised concurrently or separately from time to time. Each Loan Party hereby waives any and all existing or future claims to any offset against the sums due hereunder or under the Promissory Note and agrees to make the payments regardless of any offset or claim which may be asserted by such Loan Party or on its behalf in connection with this Agreement.

- (e) No Waiver. The failure of the Lender to exercise, or delay in the exercise of, the rights granted hereunder upon any Default by a Loan Party shall not constitute a waiver of any such right upon the continuation or recurrence of any such Default. The Lender may take or release other security; may release any party primarily or secondarily liable for the Obligations; may grant extensions, renewals or indulgences with respect to the Obligations and may apply any other security therefor held by it to the satisfaction of the Obligations without prejudice to any of its rights hereunder.

#### 11. NOTICES.

All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, personally delivered, sent by overnight courier service, sent by facsimile telecopier, or sent by certified mail, return receipt requested, addressed to the Lender or the Loan Parties at their respective addresses stated below the signature of such parties or at such other addresses as such parties shall from time to time designate in writing to the other parties; and shall be effective from the date of receipt.

#### 12. LENDER'S RIGHT TO PERFORM FOR LOAN PARTIES.

- (a) Performance and Reimbursement. If any Loan Party fails to perform or comply with any of its agreements contained herein the Lender shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any reasonable out-of-pocket expenses and other reasonable expenses of the Lender thereby incurred, together with interest thereon at the Default Rate, shall be due and payable by the Loan Parties upon demand.
- (b) Power of Attorney. Each Loan Party hereby appoints the Lender as such Loan Party's attorney-in-fact (which power shall be deemed coupled with an interest) to execute, endorse and deliver any deed, conveyance, assignment or other instrument in writing as may be required to vest in the Lender any right, title or power which by the terms hereof are expressed to be conveyed to or conferred upon the Lender, including, without limitation, real property waivers, and documents and cheques or drafts relating to or received in payment for any loss or damage under the policies of insurance required hereby, but only to the extent that the same relates to the Collateral.

#### 13. SUCCESSORS AND ASSIGNS.

This Agreement shall inure to the benefit of the Lender, its successors and assigns, and shall be binding upon Loan Parties and their successors and permitted assigns. The rights and obligations of each Loan Party under this Agreement may not be assigned or delegated. The Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, the Lender's rights and obligations hereunder, in the Promissory Note, in the Collateral and/or the Obligations held by it to others at any time and from time to time; and the Lender may disclose to any such purchaser, assignee, transferee or participant (the "**Participant**"), or potential Participant, this Agreement and all information, reports, financial statements and documents executed or obtained in connection with this



Agreement which the Lender now or hereafter may have relating to the Loan, Loan Parties, or the business of Loan Parties. Each Loan Party hereby grants to any Participant all Liens, rights and remedies of the Lender under the provisions of this Agreement or any other documents relating hereto or under applicable laws. Each Loan Party agrees that any Participant may enforce such Liens and exercise such rights and remedies in the same manner as if such Participant were the Lender and a direct creditor of such Loan Party.

14. CHOICE OF LAW: JURISDICTION: WAIVER OF JURY TRIAL.

- (a) GOVERNING LAW. THIS AGREEMENT AND ALL OTHER RELATED INSTRUMENTS AND DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, IN ALL RESPECTS, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ALBERTA (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH PROVINCE) AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL.
- (b) Jurisdiction. The parties agree that any action or proceeding arising out of or relating to this Agreement shall be commenced in the courts of the Province of Alberta, and each party irrevocably submits to the non-exclusive jurisdiction of such court and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it at its address designated pursuant hereto, or as otherwise provided under the laws of the Province of Alberta.
- (c) WAIVER OF JURY TRIAL. EACH LOAN PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH SUCH LOAN PARTY AND THE LENDER MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR THE PROMISSORY NOTE. EACH LOAN PARTY AUTHORIZES THE LENDER TO FILE THIS PROVISION WITH THE CLERK OR JUDGE OF ANY COURT HEARING SUCH CLAIM. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY SUCH LOAN PARTY AND SUCH LOAN PARTY HEREBY ACKNOWLEDGES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH LOAN PARTY FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND THE PROMISSORY NOTE AND IN THE MAKING OF THIS WAIVER BY LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

15. MISCELLANEOUS.

- (a) Entire Agreement. The Loan Documents constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.
- (b) Survival. All representations, warranties, and covenants of each Loan Party contained herein or made pursuant hereto shall survive closing and continue throughout the term hereof and until the Obligations are satisfied in full.
- (c) Severability. Any provision of the Loan Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted

by Applicable Law, each Loan Party hereby waives any provision of law which renders any provision hereof or thereof prohibited or unenforceable in any respect.

- (d) Captions. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.
- (e) Time of Essence. Time is of the essence hereof.
- (f) Expenses. Each Loan Party agrees to pay or reimburse the Lender (without duplication) for all reasonable costs and expenses (including the reasonable fees and expenses of all counsel, advisors, consultants and auditors retained in connection therewith), incurred by the Lender in connection with: (1) the performance and enforcement of the Loan Documents and the preservation of any rights thereunder (including, without limitation, filing or recording fees and taxes); (2) collection, including deficiency collections; (3) any amendment, waiver or other modification or waiver of, or consent with respect to, any Loan Document or advice in connection with the administration of the Loan or the rights thereunder; (4) any litigation, dispute, suit, proceeding or action (whether instituted by or between any combination of the Lender, Loan Parties or any other Person), and an appeal or review thereof, in any way relating to the Collateral, any Loan Document, or any action taken or any other agreements to be executed or delivered in connection therewith, whether as a party, witness or otherwise; and (5) any effort (i) to monitor the Loan, (ii) to evaluate, observe or assess Loan Parties or the affairs of such Person, and (iii) to verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of the Collateral.

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IN WITNESS WHEREOF, the parties hereto have caused this Revolving Term Loan and Security Agreement to be duly executed as of the day and year first above written.

**NATIONS FUND I, LLC**

Lender

By:

\_\_\_\_\_  
Name:

Title:

501 Merritt Seven  
Norwalk, Connecticut 06851  
Facsimile: (203) 939-1597

**SILVERPOINT ENERGY SERVICES INC.**

Borrower

By: \_\_\_\_\_

Name:

Title:

500, 435 - 4 Avenue SW  
Calgary, AB T2P 3A8  
Facsimile: (403) 984-9799

Form of Organization: Corporation  
Jurisdiction of Organization: Alberta  
Corporate Access Number: 2017442803

**NEW WEST ENERGY SERVICES INC.**

Parent Guarantor

By: \_\_\_\_\_

Name:

Title:

500, 435 - 4 Avenue SW  
Calgary, AB T2P 3A8  
Facsimile: (403) 984-9799

Form of Organization: Corporation  
Jurisdiction of Organization: Canada  
Corporate Access Number: 213478720

## SCHEDULE A

### DEFINITIONS

Capitalized terms used in this Agreement and the other Loan Documents shall have (unless otherwise provided elsewhere in this Agreement or in the Loan Documents) the following respective meanings:

**"Accounts"** means, in addition to the definition of 'account' in the PPSA, all presently existing and hereafter arising accounts receivable, contract rights, insurance receivables, and all other forms of obligations owing to the Borrower arising out of the sale, lease, license or assignment of goods or other property, or the rendition of services by the Borrower, whether or not earned by performance, all credit insurance, guarantees, and other security therefor, as well as all merchandise returned to or reclaimed by the Borrower and the Borrower's books and records relating to any of the foregoing.

**"Advance"** means the extension of credit hereunder by the Lender to the Borrower by way of the making of the Loan or any portion thereof.

**"Adverse Environmental Condition"** shall mean (i) the existence or the continuation of the existence of an Environmental Contamination (including, without limitation, a sudden or non-sudden accidental or non-accidental Environmental Contamination), or exposure to any substance, chemical, material, pollutant, Hazardous Substance, odour or audible noise or other release or emission in, into or onto the environment (including without limitation, the air, ground, water or any surface) at, in, by, from or related to any Collateral, (ii) the environmental aspect of the transportation, storage, treatment or disposal of materials in connection with the operation of any Collateral, or (iii) the violation, or alleged violation, of any Environmental Law, permits or licenses of, by or from any governmental authority, agency or court relating to environmental matters connected with any of the Collateral.

**"Affiliate"** means, with respect to any Person: (i) each other Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, five (5) percent or more of the Stock having ordinary voting power for the election of directors of such Person; (ii) each other Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person; or (iii) each of such Person's officers, directors, joint venturers and partners. For the purpose of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting Stock, by contract or otherwise.

**"Agreement"** means this Revolving Term Loan and Security Agreement including all appendices, exhibits or schedules attached or otherwise identified thereto, restatements and modifications and supplements thereto, and any appendices, exhibits or schedules to any of the foregoing, each as in effect at the time such reference becomes operative.

**"Applicable Law"** means any law, rule, regulation, ordinance, order, code, common law, interpretation, judgment, directive, decree, treaty, injunction, writ, determination, award, permit or similar norm or decision of any Governmental Authority having jurisdiction over a Loan Party or the matters herein.

**"Bank"** means Bank of Montreal, or such other bank as may be approved in writing from time to time by the Lender.

**"BearStone"** means BearStone Environmental Solutions Inc.

**"BearStone Receivership"** means the appointment on July 16, 2019 of a receiver of BearStone by the Court of Queen's Bench of Alberta pursuant to, among other things, section 243 of the *Bankruptcy and Insolvency Act* (Canada) and section 13(2) of the *Judicature Act* (Alberta).

**"Borrower"** means the Person identified as such in the preamble of this Agreement.

**"Borrowing Base"** has the meaning assigned to it in Section 1(a) of this Agreement.

**"Breakage Costs"** means any and all breakage costs and penalties required to be paid by the Lender to the counterparties under any foreign exchange derivative entered into by the Lender in connection with the Loan, which breakage costs and penalties are incurred by the Lender as a result of any repayment made hereunder by the Borrower, in connection with a reduction of the Loan.

**"BSA"** has the meaning assigned to it in Section 8(l) of this Agreement.

**"Business Day"** means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York or the City of Calgary, Alberta.

**"Closing Date"** means the date on which the conditions precedent in Section 5 are satisfied by the Loan Parties or waived by the Lender.

**"Collateral"** has the meaning assigned to it in Section 3 of this Agreement.

**"Collections Account"** has the meaning assigned to it in Section 3(a) of this Agreement.

**"Collections Account DACA"** has the meaning assigned to it in Section 3(a) of this Agreement.

**"Daily Balance"** means the amount of the Obligations owed hereunder at the end of a given day.

**"Default"** has the meaning assigned to it in Section 9 of this Agreement.

**"Default Rate"** has the meaning assigned to it in Section 2(d) of this Agreement.

**"Disbursement Account"** has the meaning assigned to it in Section 3(b) of this Agreement.

**"Disbursement Account DACA"** has the meaning assigned to it in Section 3(b) of this Agreement.

**"Eligible Accounts"** means those Accounts created by the Borrower in the ordinary course of business, which are and at all times shall continue to be acceptable to the Lender in all respects; other than the following (1) the Account debtor on such Account is and at all times continues to be acceptable to the Lender, and up to credit limits acceptable to the Lender, and (2) such Account complies in all respects with the representations, covenants and warranties hereinafter set forth. Except in the Lender's sole discretion, Eligible Accounts shall not include any of the following (a) Accounts which the Account debtor has failed to pay within 90 days of invoice date, and all Accounts owed by any Account debtor that has failed to pay twenty five percent (25%) or more of its Accounts owed to the Borrower within ninety (90) days of invoice date; (b) Accounts with respect to which goods are sold on a bill and hold basis or placed on consignment or for a guaranteed sale, or which contain other terms by reason of which payment by the Account debtor may be conditional; (c) Accounts with respect to which the Account debtor is not a resident of Canada unless the Account is supported by foreign credit insurance or a letter of credit, in both instances satisfactory to and assigned to the Lender; (d) Accounts with respect to which the Account debtor is the Crown or any department, agency or department of the Canadian federal or provincial government, or any city, town, municipality or division thereof unless all filings have been made under the applicable provincial or federal statutes, including without limitation, the *Financial Administration Act* (Canada) (e) Accounts with respect to which the Account debtor is an officer, employee or agent of, or subsidiary of, related to, affiliated with or has common shareholders, officers or directors with the Borrower; (f) Accounts with respect to which the Borrower is or may become liable to the Account debtor for goods sold or services rendered by the Account debtor to the Borrower; (g) Accounts with respect to an Account debtor whose total obligations to the Borrower exceed thirty percent (30%) of all Accounts or such other percentage as the Lender may agree to in writing as to a particular Account debtor (the applicable percentage the **"Concentration Percentage"**), to the extent such obligations exceed the applicable Concentration Percentage; (h) Accounts with respect to which the Account debtor disputes

liability or makes any claim with respect thereto, or is subject to any insolvency proceeding, or becomes insolvent, fails or goes out of business; (i) the Account arises out of a contract or purchase order for which a surety bond was issued on behalf of the Borrower; (j) Accounts in which the Lender does not have first priority and exclusive perfected security interest; (k) Accounts where the Account Debtor is in a jurisdiction for which the Borrower is required to file a notice of business activities or similar report and the Borrower has not filed such report within the time period required by applicable law; (l) any Account as to which an invoice has not been issued to the Account debtor; or (m) any Account which represents a progress billing on a contract which has not been fully completed by the Borrower; or (n) such other criteria as the Lender may establish at any time and from time to time on notice to the Borrower.

**"Environment"** or **"Environmental"** or **"Environmentally"** means the components of the earth and includes: (i) air, land subsurface strata, water, surface water and groundwater; (ii) all layers of the atmosphere; (iii) all organic and inorganic matter and living organisms; and (iv) the interacting natural systems that include components referred to in (i) to (iii).

**"Environmental Claim"** shall mean any accusation, allegation, notice of violation, claim, demand, abatement or other order on direction (conditional or otherwise) by any governmental authority or any Person for personal injury (including sickness, disease or death), tangible or intangible property damage, damage to the environment or other adverse effects on the environment, or for fines, penalties or restrictions, resulting from or based upon any Adverse Environmental Condition.

**"Environmental Contamination"** shall mean any actual or threatened release, spill, emission, leaking, pumping, injection, presence, deposit, abandonment, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, or into or out of any of the Collateral, including, without limitation, the movement or any Hazardous Substance or other substance through or in the air, soil, surface water, groundwater, or property which is not in compliance with applicable Environmental Laws.

**"Environmental Law"** means any Applicable Law, including any applicable guidelines and standards, relating in any way to the Environment, Environmental protection or occupational health and safety.

**"Environmental Loss"** shall mean any loss, cost, damage, liability, deficiency, fine, penalty or expense (including, without limitation, reasonable attorneys' fees, engineering and other professional or expert fees), investigation, removal, cleanup and remedial costs (voluntarily or involuntarily incurred) and damages to, loss of the use of or decrease in value of the Collateral arising out of or related to any Adverse Environmental Condition.

**"Event"** has the meaning assigned to it in Section 9(i) of this Agreement.

**"Event of Loss"** has the meaning assigned to it in Section 8(e) of this Agreement.

**"Fees"** has the meaning assigned to it in Section 2(d) of this Agreement.

**"Financing Statements"** has the meaning assigned to it in Section 3 of this Agreement.

**"GAAP"** means, generally accepted accounting principles in the Canada as in effect from time to time, consistently applied, including, if applicable to any Loan Party, IFRS or ASPE.

**"Governmental Authority"** means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**"Guarantee"** means a guarantee dated as of the Closing Date, granted by the Parent to the Lender guaranteeing the Obligations of the Borrower.

**"Hazardous Substance"** means any pollutants, contaminants, hydrocarbon contaminants, asbestos materials, hazardous, corrosive or toxic substances or underground or aboveground tanks, urea formaldehyde, deleterious substances, special waste or waste of any kind, including any substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the Environment which is prohibited, controlled, regulated or licensed under Environmental Law.

**"Lender"** has the meaning assigned to it in the preamble of this Agreement and, if at any time the Lender shall decide to assign, participate or syndicate all or any of the Obligations, such term shall include each such assignee, Participant or such other members of the syndicate; together with its or their successors and assigns.

**"Lien"** means any mortgage, security deed or deed of trust, pledge, hypothecation, assignment, deposit arrangement, Lien, charge, claim, security interest, security title, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the PPSA, any comparable law of any jurisdiction or any other statute governed by Applicable Law).

**"Loan"** means the loan in the amount of the aggregate principal amount of all advances and evidenced by the Promissory Note, and made to the Borrower under the terms of this Agreement, and any renewals, extensions, revisions, modifications or replacements therefor or thereof.

**"Loan Documents"** means this Agreement, the Promissory Note, the Guarantee, and any other guarantee and the other documents and instruments executed by any of the Loan Parties pursuant hereto.

**"Loan Rate"** has the meaning assigned to it in the Promissory Note.

**"Material Adverse Effect"** means: a material adverse effect on (a) the business, assets, operations or financial condition of a Loan Party or the industry within which a Loan Party operates, (b) the Borrower's ability to pay or perform the Obligations under the Loan Documents in accordance with the terms thereof, (c) the Collateral or the Lien of the Lender on the Collateral granted hereunder or the priority of such Lien, or (d) the Lender's rights and remedies under this Agreement and the other Loan Documents.

**"Maximum Amount"** has the meaning assigned to it in Section 1(a) of this Agreement.

**"Obligations"** means all loans, interest, advances, debts, expense reimbursement, fees (including if applicable, any Fees), liabilities, and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by the Borrower to the Lender or any of the Lender's Affiliates, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, whether arising under any of the Loan Documents or under any other agreement between the Borrower and the Lender or any of the Lender's Affiliates, and all covenants and duties regarding such amounts. This term includes all principal, interest (including interest accruing at the then applicable rate provided in this Agreement after the maturity of the Loan and interest accruing at the then applicable rate provided in this Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, charges, expenses, attorneys' fees and any other sum chargeable to the Borrower under any of the Loan Documents, and all principal, and interest due in respect of the Loan.

**"OFAC"** has the meaning assigned to it in Section 8(l) of this Agreement.

**"Other Currency"** has the meaning assigned to it in Section 1(h) of this Agreement.

**“Overadvance”** has the meaning assigned to it in Section 1(c) of this Agreement.

**“Overadvance Fee”** has the meaning assigned to it in Section 1(c) of this Agreement.

**“Porterco”** means Porterco Oilfield Services Inc.

**"Participant"** has the meaning assigned to it in Section 13 of this Agreement.

**"Pending Default"** means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute a Default.

**"Person"** means any individual, sole proprietorship, entity, limited liability entity, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation or government (whether Federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof), and shall include such Person's successors and assigns.

**"PPSA"** means the *Personal Property Security Act* (Alberta) and the regulations thereunder, as in effect from time to time.

**"Premises"** has the meaning assigned to it in Section 8(f) of this Agreement.

**"Proceeds"** means "proceeds," as such term is defined in the PPSA and, in any event, shall include: (i) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to a Loan Party from time to time with respect to any Collateral; (ii) any and all payments (in any form whatsoever) made or due and payable to a Loan Party from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any Collateral by any governmental body, authority, bureau or agency (or any Person acting under color of governmental authority); (iii) any recoveries by a Loan Party against third parties with respect to any litigation or dispute concerning any Collateral, including claims arising at of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral; and (iv) any and all other amounts, rights to payment or other property acquired upon the sale, lease, licence exchange or other disposition of Collateral and all rights arising out of Collateral.

**"Promissory Note"** has the meaning assigned to it in Section 1(d) of this Agreement.

**"Specified Rate"** has the meaning assigned to it in Section 2(g) of this Agreement.

**"Stock"** means all certificated and uncertificated shares, options, warrants, membership interests, general or limited partnership interests, participation or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

**"Taxes"** means taxes, levies, imposts, deductions, charges or withholdings imposed by a Governmental Authority, and all liabilities with respect thereto; excluding taxes imposed on or measured by the net income of the Lender.

Any accounting term used in this Agreement or the other Loan Documents shall have, unless otherwise specifically provided therein, the meaning customarily given such term in accordance with GAAP, and all financial computations thereunder shall be computed, unless otherwise specifically provided therein, in accordance with GAAP consistently applied; provided, that all financial covenants and calculations in the Loan Documents shall be made in accordance with GAAP as in effect on the Closing Date unless Loan Parties and the Lender shall otherwise specifically agree in writing. That certain items or computations



are explicitly modified by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. All other undefined terms contained in this Agreement or the other Loan Documents all, unless the context indicates otherwise, have the meanings provided for by the PPSA. The words "herein," "hereof" and "hereunder" or other words of similar import refer to this Agreement as a whole, including the exhibits and schedules thereto, as the same may from time to time be amended, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement.

For purposes of this Agreement and the other Loan Documents, the following additional rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural; (b) the term "or" is not exclusive; (c) the term "including" (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; and (e) all references to any instruments or agreements, including references to any of the Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

**SCHEDULE B**  
**DRAWDOWN NOTICE**

To: Nations Fund I, LLC

Re: Revolving Term Loan and Security Agreement dated as of July [add], 2019 (such Revolving Term Loan Agreement, as it may be amended, supplemented or otherwise modified or restated from time to time, referred to as the **Loan Agreement**), by and between the Borrower, the Parent and the Lender

1 The date of the Advance is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

2 The undersigned hereby irrevocably requests that the following Advance under the Loan Agreement be made available:

Amount:       \$ \_\_\_\_\_

3 The undersigned certifies to the Lender that:

- (a) no material adverse change in the financial condition or operations of the Borrower has occurred since the Closing Date;
- (b) on the date hereof, no pending Default or Pending Default exists and Default will occur as a result of the making of the Advance contemplated herein; and
- (c) all representations and warranties contained in the Loan Agreement (excluding those representations and warranties which are expressly limited to the Closing Date) are true and correct in all material respects as if made on such date.

4 This Notice is irrevocable.

5 Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Loan Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**SILVERPOINT ENERGY SERVICES INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "F"**  
**PROMISSORY NOTES**

**PROMISSORY NOTE NO. SP-001A  
(PRIMARY INDEBTEDNESS)**

\$1,300,000  
July [add], 2019

For value received, the receipt and sufficiency of which are hereby acknowledged, SILVERPOINT ENERGY SERVICES INC. (the "**Borrower**"), hereby promises to pay to the order of NATIONS FUND I, LLC (together with its successors and assigns, the "**Lender**"), the amount of **ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000)** (the "**Principal Sum**") in lawful money of Canada in accordance with this Promissory Note. The Borrower hereby acknowledges receipt of the Principal Sum in accordance with the terms of the Agreement (as defined below). All dollar amounts noted herein are in Canadian dollars unless stated otherwise.

"**Loan Rate**" shall mean nine (9) percent per annum, subject to a possible increase in the Loan Rate of two (2) percent per annum in accordance with Section 2(d) of the Agreement.

This Promissory Note is the Promissory Note referred to in, and issued under the Term Loan and Security Agreement dated as of July [add], 2019, between the Borrower and the Lender (said agreement, as the same shall be amended, restated or supplemented from time to time, being herein called the "**Agreement**"), to which reference is made for a statement of all of the terms and conditions of the Loan evidenced hereby. Capitalized terms used and not defined in this Promissory Note shall have the respective meanings assigned to them in the Agreement. This Promissory Note is secured by the Agreement, the other Loan Documents and the Collateral, and is entitled to the benefit of the rights and security provided thereby. In the event of any conflict or inconsistency between the provisions of this Promissory Note and the provisions of the Agreement, the provisions of the Agreement shall govern.

The Principal Sum and interest due thereon shall be payable as follows, as set forth in the payment schedule attached hereto as Schedule "A":

- (a) Fifty seven (57) consecutive monthly installments of principal on the [add] day of each calendar month during the term hereof, commencing November [add], 2019, together with interest (such interest payable in arrears and computed on the basis of a thirty day month/360 day year), on the [add] day of each calendar month during the term hereof on the unpaid balance of the Principal Sum remaining from August [add], 2019, subject to adjustment pursuant to terms hereof and prepayment of the Principal Sum as permitted pursuant to the terms of the Agreement.
- (b) The Borrower shall repay, or cause to be repaid, the Loan in full on the earlier of July [add], 2024 (the "**Stated Maturity Date**") and any date of acceleration or prepayment in full of the Loan pursuant to the terms of the Agreement, at which time the Borrower shall repay in full, if any, the aggregate of the then outstanding Principal Sum plus all accrued and unpaid interest thereon, any Prepayment Fee applicable to the Loan and all other fees, expenses or other amounts owed hereunder and under each Loan Document related to the Loan.
- (c) If any payment due hereunder is not received within five (5) days of its due date, the Borrower shall pay a late charge equal to five (5) percent of the amount in arrears.

The Borrower is entitled to prepay in accordance with the terms of the Agreement.

Interest Act (Canada). Solely for purposes of the *Interest Act (Canada)*: (1) whenever the interest is to be computed or expressed at any rate (the "**Specified Rate**") on the basis of a year of less than 365 days or

any other period of time less than a calendar year hereunder, the annual rate of interest to which each such Specified Rate is equal is such Specified Rate multiplied by a fraction, the numerator of which is the actual number of days in the relevant year and the denominator of which is 360 or such other period of time, respectively; (2) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder; and (3) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

To the fullest extent permitted by Applicable Law, the Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the Obligations, this Promissory Note or the other Loan Documents; (b) all rights to notice and a hearing prior to Lender's taking possession or control of, or to Lender's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal and exemption laws.

The Borrower acknowledges that this Promissory Note is executed as part of a commercial transaction and that the proceeds of this Promissory Note will not be used for any personal or consumer purpose.

In the event of the declaration by Lender of a Default under the Agreement, then this Promissory Note shall be in default and the balance of the Principal Sum then due hereunder, together with all accrued interest thereon, immediately shall accelerate and become due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorneys' fees and costs of suit and enforcement.

The remedies of Lender as provided herein and in the Agreement shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

It is the intention of the parties hereto to comply with the applicable usury laws. Accordingly, it is agreed that, notwithstanding any provisions to the contrary in this Promissory Note or the Agreement, in no event shall this Promissory Note or the Agreement require the payment or permit the collection of interest in excess of the maximum amount permitted by Applicable Law. If any such excess interest is contracted for, charged or received under this Promissory Note or the Agreement, or in the event that all of the principal balance shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received under this Promissory Note or the Agreement on the principal balance shall exceed the maximum amount of interest permitted by Applicable Law, then in such event: (a) the provisions of this paragraph shall govern and control, (b) neither the Borrower nor any other person or entity now or hereafter liable for the payment hereof shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by Applicable Law, (c) any such excess which may have been collected shall either be forthwith applied as a credit against the then unpaid principal balance or refunded to the Borrower, at the option of Lender, and (d) the effective rate of interest shall be automatically reduced to the maximum lawful contract rate allowed under Applicable Law as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that, without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under this Promissory Note or the Agreement which are made for the purpose of determining whether such rate exceeds the maximum lawful contract rate, shall be made, to the extent permitted by Applicable Law, by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the indebtedness evidenced hereby, all interest at any time contracted for, charged or received from the Borrower or otherwise by Lender in connection with such Obligations; provided, however, that if any applicable provincial or state law is amended or the law of the United States of America or Canada pre-empts any applicable provincial or state law, so that it becomes lawful for Lender to receive a greater interest per annum rate than is presently allowed by law, the Borrower agrees that, on the effective date of such amendment or pre-emption, as the case may be, the lawful maximum hereunder shall be increased to the maximum interest rate per annum allowed by the amended provincial law, state law or the law of

Canada or the United States of America (but not in excess of the Loan Rate (or, if applicable, the Default Rate) provided for herein).

THE BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH SUCH BORROWER AND LENDER MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS PROMISSORY NOTE. THE BORROWER AUTHORIZES LENDER TO FILE THIS PROVISION WITH THE CLERK OR JUDGE OF ANY COURT HEARING SUCH CLAIM. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY SUCH BORROWER AND SUCH BORROWER HEREBY ACKNOWLEDGES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS PROMISSORY NOTE AND IN THE MAKING OF THIS WAIVER BY LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

THE BORROWER AGREES THAT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ALBERTA (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH PROVINCE) AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Actions for any action hereunder or related hereto shall be subject to the non-exclusive jurisdiction of the Courts of the Province of Alberta, and the Borrower irrevocably submits to the non-exclusive jurisdiction of such courts. Nothing herein shall affect the right to serve process in any manner permitted by Applicable Law or limit the right of the Lender to bring proceedings against the Borrower in the courts of any other jurisdiction.

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IN WITNESS WHEREOF, this Promissory Note has been duly executed as of the date first written above.

**SILVERPOINT ENERGY SERVICES INC.**

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE "A"**

TO PROMISSORY NOTE NO. SP-001A

**SP-001A Loan Amortization  
(Canadian Dollars)**

<b>Date</b>	<b>Funding</b>	<b>Payment Amount</b>	<b>Interest</b>	<b>Principal</b>	<b>Remaining Balance</b>
7/23/2019	1,300,000.00				1,300,000.00
8/23/2019		9,750.00	9,750.00	-	1,300,000.00
9/23/2019		9,750.00	9,750.00	-	1,300,000.00
10/23/2019		9,750.00	9,750.00	-	1,300,000.00
11/23/2019		28,112.44	9,750.00	18,362.44	1,281,637.56
12/23/2019		28,112.44	9,612.28	18,500.16	1,263,137.39
1/23/2020		28,112.44	9,473.53	18,638.91	1,244,498.48
2/23/2020		28,112.44	9,333.74	18,778.70	1,225,719.78
3/23/2020		28,112.44	9,192.90	18,919.55	1,206,800.23
4/23/2020		28,112.44	9,051.00	19,061.44	1,187,738.79
5/23/2020		28,112.44	8,908.04	19,204.40	1,168,534.39
6/23/2020		28,112.44	8,764.01	19,348.44	1,149,185.95
7/23/2020		28,112.44	8,618.89	19,493.55	1,129,692.40
8/23/2020		28,112.44	8,472.69	19,639.75	1,110,052.65
9/23/2020		28,112.44	8,325.39	19,787.05	1,090,265.61
10/23/2020		28,112.44	8,176.99	19,935.45	1,070,330.15
11/23/2020		28,112.44	8,027.48	20,084.97	1,050,245.19
12/23/2020		28,112.44	7,876.84	20,235.60	1,030,009.58
1/23/2021		28,112.44	7,725.07	20,387.37	1,009,622.21
2/23/2021		28,112.44	7,572.17	20,540.28	989,081.93
3/23/2021		28,112.44	7,418.11	20,694.33	968,387.61
4/23/2021		28,112.44	7,262.91	20,849.54	947,538.07
5/23/2021		28,112.44	7,106.54	21,005.91	926,532.16



<b>Date</b>	<b>Funding</b>	<b>Payment Amount</b>	<b>Interest</b>	<b>Principal</b>	<b>Remaining Balance</b>
6/23/2021		28,112.44	6,948.99	21,163.45	905,368.71
7/23/2021		28,112.44	6,790.27	21,322.18	884,046.53
8/23/2021		28,112.44	6,630.35	21,482.09	862,564.44
9/23/2021		28,112.44	6,469.23	21,643.21	840,921.23
10/23/2021		28,112.44	6,306.91	21,805.53	819,115.69
11/23/2021		28,112.44	6,143.37	21,969.08	797,146.62
12/23/2021		28,112.44	5,978.60	22,133.84	775,012.77
1/23/2022		28,112.44	5,812.60	22,299.85	752,712.93
2/23/2022		28,112.44	5,645.35	22,467.10	730,245.83
3/23/2022		28,112.44	5,476.84	22,635.60	707,610.23
4/23/2022		28,112.44	5,307.08	22,805.37	684,804.86
5/23/2022		28,112.44	5,136.04	22,976.41	661,828.46
6/23/2022		28,112.44	4,963.71	23,148.73	638,679.73
7/23/2022		28,112.44	4,790.10	23,322.35	615,357.38
8/23/2022		28,112.44	4,615.18	23,497.26	591,860.12
9/23/2022		28,112.44	4,438.95	23,673.49	568,186.63
10/23/2022		28,112.44	4,261.40	23,851.04	544,335.58
11/23/2022		28,112.44	4,082.52	24,029.93	520,305.66
12/23/2022		28,112.44	3,902.29	24,210.15	496,095.50
1/23/2023		28,112.44	3,720.72	24,391.73	471,703.78
2/23/2023		28,112.44	3,537.78	24,574.67	447,129.11
3/23/2023		28,112.44	3,353.47	24,758.98	422,370.14
4/23/2023		28,112.44	3,167.78	24,944.67	397,425.47
5/23/2023		28,112.44	2,980.69	25,131.75	372,293.72
6/23/2023		28,112.44	2,792.20	25,320.24	346,973.48
7/23/2023		28,112.44	2,602.30	25,510.14	321,463.33

Date	Funding	Payment Amount	Interest	Principal	Remaining Balance
8/23/2023		28,112.44	2,410.98	25,701.47	295,761.87
9/23/2023		28,112.44	2,218.21	25,894.23	269,867.64
10/23/2023		28,112.44	2,024.01	26,088.44	243,779.20
11/23/2023		28,112.44	1,828.34	26,284.10	217,495.10
12/23/2023		28,112.44	1,631.21	26,481.23	191,013.87
1/23/2024		28,112.44	1,432.60	26,679.84	164,334.03
2/23/2024		28,112.44	1,232.51	26,879.94	137,454.09
3/23/2024		28,112.44	1,030.91	27,081.54	110,372.56
4/23/2024		28,112.44	827.79	27,284.65	83,087.91
5/23/2024		28,112.44	623.16	27,489.28	55,598.62
6/23/2024		28,112.44	416.99	27,695.45	27,903.17
7/23/2024		28,112.44	209.27	27,903.17	0

**PROMISSORY NOTE NO. SP-001B  
(CONTINGENT INDEBTEDNESS)**

\$1,748,911  
July [add], 2019

For value received, the receipt and sufficiency of which are hereby acknowledged, SILVERPOINT ENERGY SERVICES INC. (the “**Borrower**”), hereby promises to pay to the order of NATIONS FUND I, LLC (together with its successors and assigns, the “**Lender**”), the amount of **ONE MILLION SEVEN HUNDRED FORTY EIGHT THOUSAND NINE HUNDRED ELEVEN DOLLARS (\$1,748,911)** (the “**Principal Sum**”) in lawful money of Canada in accordance with this Promissory Note, subject to Adjustment (as defined below). The Borrower hereby acknowledges receipt of the Principal Sum, subject to Adjustment, in accordance with the terms of the Agreement (as defined below). All dollar amounts noted herein are in Canadian dollars unless stated otherwise.

“**Loan Rate**” shall mean nine (9) percent per annum, subject to a possible increase in the Loan Rate of two (2) percent per annum in accordance with Section 2(d) of the Agreement.

This Promissory Note is the Promissory Note referred to in, and issued under the Term Loan and Security Agreement dated as of July [add], 2019, between the Borrower and the Lender (said agreement, as the same shall be amended, restated or supplemented from time to time, being herein called the “**Agreement**”), to which reference is made for a statement of all of the terms and conditions of the Loan evidenced hereby. Capitalized terms used and not defined in this Promissory Note shall have the respective meanings assigned to them in the Agreement. This Promissory Note is secured by the Agreement, the other Loan Documents and the Collateral, and is entitled to the benefit of the rights and security provided thereby. In the event of any conflict or inconsistency between the provisions of this Promissory Note and the provisions of the Agreement, the provisions of the Agreement shall govern.

As of February [add], 2020, the Principal Sum shall be adjusted (the “**Adjustment**”) and reduced (along with accrued interest) by the amount of funds received by the receiver of BearStone Environmental Solutions Inc. (“**BearStone**”) appointed on July [add], 2019 by the Court of Queen’s Bench of Alberta in Action No. 1901-08251 pursuant to, among other things, section 243 of the *Bankruptcy and Insolvency Act* (Canada) and section 13(2) of the *Judicature Act* (Alberta): (A) in excess of \$1,710,000 (not to be reduced by any sales commissions or other expenses) associated with the sale of assets remaining with BearStone; and (B) in excess of \$1,095,291 associated with the collection of BearStone’s accounts receivable.

The Principal Sum, subject to Adjustment, and interest due thereon shall be payable as follows, as set forth in the payment schedule attached hereto as Schedule “A”:

- (a) Fifty four (54) consecutive monthly installments of principal together with interest (such interest payable in arrears and computed on the basis of a thirty day month/360 day year) on the [add] day of each calendar month during the term hereof, commencing February [add], 2020, subject to adjustment pursuant to terms hereof and prepayment of the Principal Sum as permitted pursuant to the terms of the Agreement.
- (b) The Borrower shall repay, or cause to be repaid, the Loan in full on the earlier of July [add], 2024 (the “**Stated Maturity Date**”) and any date of acceleration or prepayment in full of the Loan pursuant to the terms of the Agreement, at which time the Borrower shall repay in full, if any, the aggregate of the then outstanding Principal Sum plus all accrued and unpaid interest thereon, any Prepayment Fee applicable to the Loan and all other fees, expenses or other amounts owed hereunder and under each Loan Document related to the Loan.

- (c) If any payment due hereunder is not received within five (5) days of its due date, the Borrower shall pay a late charge equal to five (5) percent of the amount in arrears.

The Borrower is entitled to prepay in accordance with the terms of the Agreement.

Interest Act (Canada). Solely for purposes of the *Interest Act* (Canada): (1) whenever the interest is to be computed or expressed at any rate (the "**Specified Rate**") on the basis of a year of less than 365 days or any other period of time less than a calendar year hereunder, the annual rate of interest to which each such Specified Rate is equal is such Specified Rate multiplied by a fraction, the numerator of which is the actual number of days in the relevant year and the denominator of which is 360 or such other period of time, respectively; (2) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder; and (3) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

To the fullest extent permitted by Applicable Law, the Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the Obligations, this Promissory Note or the other Loan Documents; (b) all rights to notice and a hearing prior to Lender's taking possession or control of, or to Lender's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal and exemption laws.

The Borrower acknowledges that this Promissory Note is executed as part of a commercial transaction and that the proceeds of this Promissory Note will not be used for any personal or consumer purpose.

In the event of the declaration by Lender of a Default under the Agreement, then this Promissory Note shall be in default and the balance of the Principal Sum then due hereunder, together with all accrued interest thereon, immediately shall accelerate and become due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorneys' fees and costs of suit and enforcement.

The remedies of Lender as provided herein and in the Agreement shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

It is the intention of the parties hereto to comply with the applicable usury laws. Accordingly, it is agreed that, notwithstanding any provisions to the contrary in this Promissory Note or the Agreement, in no event shall this Promissory Note or the Agreement require the payment or permit the collection of interest in excess of the maximum amount permitted by Applicable Law. If any such excess interest is contracted for, charged or received under this Promissory Note or the Agreement, or in the event that all of the principal balance shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received under this Promissory Note or the Agreement on the principal balance shall exceed the maximum amount of interest permitted by Applicable Law, then in such event: (a) the provisions of this paragraph shall govern and control, (b) neither the Borrower nor any other person or entity now or hereafter liable for the payment hereof shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by Applicable Law, (c) any such excess which may have been collected shall either be forthwith applied as a credit against the then unpaid principal balance or refunded to the Borrower, at the option of Lender, and (d) the effective rate of interest shall be automatically reduced to the maximum lawful contract rate allowed under Applicable Law as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that, without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under this Promissory Note or the Agreement which are made for the purpose of determining whether such rate exceeds the maximum lawful contract rate, shall be made, to the extent permitted by Applicable Law, by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the indebtedness evidenced hereby, all interest at any time contracted for, charged or received from the

Borrower or otherwise by Lender in connection with such Obligations; provided, however, that if any applicable provincial or state law is amended or the law of the United States of America or Canada pre-empts any applicable provincial or state law, so that it becomes lawful for Lender to receive a greater interest per annum rate than is presently allowed by law, the Borrower agrees that, on the effective date of such amendment or pre-emption, as the case may be, the lawful maximum hereunder shall be increased to the maximum interest rate per annum allowed by the amended provincial law, state law or the law of Canada or the United States of America (but not in excess of the Loan Rate (or, if applicable, the Default Rate) provided for herein).

THE BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH SUCH BORROWER AND LENDER MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS PROMISSORY NOTE. THE BORROWER AUTHORIZES LENDER TO FILE THIS PROVISION WITH THE CLERK OR JUDGE OF ANY COURT HEARING SUCH CLAIM. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY SUCH BORROWER AND SUCH BORROWER HEREBY ACKNOWLEDGES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS PROMISSORY NOTE AND IN THE MAKING OF THIS WAIVER BY LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

THE BORROWER AGREES THAT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ALBERTA (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH PROVINCE) AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. ACTIONS FOR ANY ACTION HEREUNDER OR RELATED HERETO SHALL BE SUBJECT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE PROVINCE OF ALBERTA, AND THE BORROWER IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF SUCH COURTS. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW OR LIMIT THE RIGHT OF THE LENDER TO BRING PROCEEDINGS AGAINST THE BORROWER IN THE COURTS OF ANY OTHER JURISDICTION.

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IN WITNESS WHEREOF, this Promissory Note has been duly executed as of the date first written above.

**SILVERPOINT ENERGY SERVICES INC.**

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE "A"**

TO PROMISSORY NOTE NO. SP-001B

**SP-001B Loan Amortization  
(Canadian Dollars)**

<b>Date</b>	<b>Funding</b>	<b>Payment Amount</b>	<b>Interest</b>	<b>Principal</b>	<b>Remaining Balance</b>
7/23/2019	1,748,911.00				1,748,911.00
8/23/2019		-	13,116.83	(13,116.83)	1,762,027.83
9/23/2019		-	13,215.21	(13,215.21)	1,775,243.04
10/23/2019		-	13,314.32	(13,314.32)	1,788,557.36
11/23/2019		-	13,414.18	(13,414.18)	1,801,971.54
12/23/2019		-	13,514.79	(13,514.79)	1,815,486.33
1/23/2020		-	13,616.15	(13,616.15)	1,829,102.48
2/23/2020		41,318.28	13,718.27	27,600.01	1,801,502.46
3/23/2020		41,318.28	13,511.27	27,807.01	1,773,695.45
4/23/2020		41,318.28	13,302.72	28,015.57	1,745,679.88
5/23/2020		41,318.28	13,092.60	28,225.68	1,717,454.20
6/23/2020		41,318.28	12,880.91	28,437.38	1,689,016.82
7/23/2020		41,318.28	12,667.63	28,650.66	1,660,366.17
8/23/2020		41,318.28	12,452.75	28,865.54	1,631,500.63
9/23/2020		41,318.28	12,236.25	29,082.03	1,602,418.60
10/23/2020		41,318.28	12,018.14	29,300.14	1,573,118.46
11/23/2020		41,318.28	11,798.39	29,519.89	1,543,598.57
12/23/2020		41,318.28	11,576.99	29,741.29	1,513,857.27
1/23/2021		41,318.28	11,353.93	29,964.35	1,483,892.92
2/23/2021		41,318.28	11,129.20	30,189.09	1,453,703.84
3/23/2021		41,318.28	10,902.78	30,415.50	1,423,288.33
4/23/2021		41,318.28	10,674.66	30,643.62	1,392,644.71
5/23/2021		41,318.28	10,444.84	30,873.45	1,361,771.27

Date	Funding	Payment Amount	Interest	Principal	Remaining Balance
6/23/2021		41,318.28	10,213.28	31,105.00	1,330,666.27
7/23/2021		41,318.28	9,980.00	31,338.29	1,299,327.98
8/23/2021		41,318.28	9,744.96	31,573.32	1,267,754.66
9/23/2021		41,318.28	9,508.16	31,810.12	1,235,944.54
10/23/2021		41,318.28	9,269.58	32,048.70	1,203,895.84
11/23/2021		41,318.28	9,029.22	32,289.06	1,171,606.77
12/23/2021		41,318.28	8,787.05	32,531.23	1,139,075.54
1/23/2022		41,318.28	8,543.07	32,775.22	1,106,300.33
2/23/2022		41,318.28	8,297.25	33,021.03	1,073,279.30
3/23/2022		41,318.28	8,049.59	33,268.69	1,040,010.61
4/23/2022		41,318.28	7,800.08	33,518.20	1,006,492.41
5/23/2022		41,318.28	7,548.69	33,769.59	972,722.82
6/23/2022		41,318.28	7,295.42	34,022.86	938,699.96
7/23/2022		41,318.28	7,040.25	34,278.03	904,421.92
8/23/2022		41,318.28	6,783.16	34,535.12	869,886.80
9/23/2022		41,318.28	6,524.15	34,794.13	835,092.67
10/23/2022		41,318.28	6,263.20	35,055.09	800,037.59
11/23/2022		41,318.28	6,000.28	35,318.00	764,719.59
12/23/2022		41,318.28	5,735.40	35,582.89	729,136.70
1/23/2023		41,318.28	5,468.53	35,849.76	693,286.94
2/23/2023		41,318.28	5,199.65	36,118.63	657,168.31
3/23/2023		41,318.28	4,928.76	36,389.52	620,778.79
4/23/2023		41,318.28	4,655.84	36,662.44	584,116.35
5/23/2023		41,318.28	4,380.87	36,937.41	547,178.94
6/23/2023		41,318.28	4,103.84	37,214.44	509,964.50
7/23/2023		41,318.28	3,824.73	37,493.55	472,470.95



<b>Date</b>	<b>Funding</b>	<b>Payment Amount</b>	<b>Interest</b>	<b>Principal</b>	<b>Remaining Balance</b>
8/23/2023		41,318.28	3,543.53	37,774.75	434,696.20
9/23/2023		41,318.28	3,260.22	38,058.06	396,638.14
10/23/2023		41,318.28	2,974.79	38,343.50	358,294.64
11/23/2023		41,318.28	2,687.21	38,631.07	319,663.57
12/23/2023		41,318.28	2,397.48	38,920.81	280,742.77
1/23/2024		41,318.28	2,105.57	39,212.71	241,530.05
2/23/2024		41,318.28	1,811.48	39,506.81	202,023.25
3/23/2024		41,318.28	1,515.17	39,803.11	162,220.14
4/23/2024		41,318.28	1,216.65	40,101.63	122,118.51
5/23/2024		41,318.28	915.89	40,402.39	81,716.11
6/23/2024		41,318.28	612.87	40,705.41	41,010.70
7/23/2024		41,318.28	307.58	41,010.70	0

**GRID PROMISSORY NOTE**

Max \$1,500,000  
July [add], 2019

**FOR VALUE RECEIVED**, the undersigned, **SILVERPOINT ENERGY SERVICES INC.** (the “**Maker**”), acknowledges itself indebted and unconditionally promises to pay to, or to the order of, **NATIONS FUND I, LLC** (the “**Holder**”) at its offices at 501 Merritt Seven, Norwalk, Connecticut, or such other place as the Holder may, from time to time, designate, the principal amount outstanding as recorded by the Maker in the column entitled “Unpaid Principal Balance” on the record (the “**Grid**”) attached to and forming part of this Note. The Unpaid Principal Balance shall not, at any time, exceed \$1,500,000.00 in lawful money of Canada. All dollar amounts noted herein are in Canadian dollars unless stated otherwise.

The Holder shall and is unconditionally and absolutely authorized and directed by the Maker to record on the Grid (a) the date and amount of each advance made by the Holder and the resulting increase in the Unpaid Principal Balance, and (b) the date and amount of each repayment on account of principal paid to the Holder and the resulting decrease of the Unpaid Principal Balance. Such notations, in the absence of manifest mathematical error, is *prima facie* evidence of such advances, repayments and the Unpaid Principal Balances; provided that the failure of the Holder to record the same shall not affect the obligations of the Maker to pay such amounts to the Holder.

This Note is secured by a Revolving Term Loan and Security Agreement (the “**Loan Agreement**”) executed by the Maker, the Holder, and New West Energy Services Inc. on the date hereof. In the event of any inconsistency between this Note and the Loan Agreement, the provisions of the Loan Agreement shall prevail.

The Unpaid Principal Balance shall bear interest from this date at the rate of interest of 7.2% per annum (the “**Loan Rate**”). Until such time as the Unpaid Principal Balance becomes due and payable per the terms of the Loan Agreement, interest shall be payable monthly in arrears on the [first] day of each month commencing [August 1, 2019] until the Unpaid Principal Balance has been paid in full. Upon demand being made under the Loan Agreement, all accrued and unpaid interest shall become immediately due and payable.

The Maker has the right and privilege of prepaying the whole or any portion of the Unpaid Principal Balance, together with any interest accrued thereon as set out above at any time or times. Any such prepayments shall be applied first in satisfaction of any accrued but unpaid interest and thereafter to the Unpaid Principal Balance.

To the fullest extent permitted by law, the Maker waives:

- (a) diligence, presentment, demand and protest, and notice of presentment, dishonour, intent to accelerate, acceleration, protest, non-payment, release, compromise, settlement, extension or renewal of this Note; and
- (b) the benefit of all applicable valuation, appraisal and exemption laws.

The Maker agrees that all amounts under this Note are payable without set-off, withholding, deduction, claim, counterclaim, defence or recoupment, all of which are hereby waived by the Maker.

Upon request of the Holder, the Maker shall, from time to time, execute and deliver acknowledgements of its liability and the continuing existence of the Holder’s claims against the Maker pursuant to this Note.

Time is of the essence with this Note.

This Note is binding upon the Maker and its successors and assigns and enures to the benefit of the Holder and its successors and assigns. The Holder may at any time assign all or any of its rights and benefits hereunder and all references to the "Holder" are deemed to include a reference to its successors and assigns. The Maker may not assign any of its rights or obligations hereunder.

This Note is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF** the Maker has executed this Note as of the date first above written.

**SILVERPOINT ENERGY SERVICES INC.**

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE A  
ADVANCES AND REPAYMENT OF PRINCIPAL**

<b>Date</b>	<b>Amount of Advance</b>	<b>Principal Repaid or Prepaid</b>	<b>Unpaid Principal Balance</b>	<b>Notation Made By</b>

**SCHEDULE "G"**  
**GUARANTEES**

**Dated**

**July [add], 2019**

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**NEW WEST ENERGY SERVICES INC.**

**and**

**NATIONS FUND I, LLC**

**GUARANTEE**

(Term Loan and Security Agreement  
Reference No. SP-001)

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**THIS GUARANTEE** is dated July [add], 2019 and made between:

- (1) **NEW WEST ENERGY SERVICES INC.**, a corporation formed under the laws of Alberta (the “**Guarantor**”); and
- (2) **NATIONS FUND I, LLC**, a limited liability company formed under the laws of Connecticut (the “**Lender**”).

**RECITALS:**

- (A) The Lender has agreed to make certain credit facilities available to **SILVERPOINT ENERGY SERVICES INC.** (the “**Corporation**”) upon the terms and conditions contained in a term loan and security agreement among the Corporation, the Guarantor and the Lender dated as of this date (such loan agreement as it may at any time or from time to time be amended, supplemented, restated or replaced, the “**Term Loan and Security Agreement**”).
- (B) The Guarantor has agreed with the Lender to guarantee the payment and performance of all present and future debts, liabilities and obligations, direct or indirect, absolute or contingent, of the Corporation to the Lender arising pursuant to, or in respect of, the Term Loan and Security Agreement and the other Loan Documents.
- (C) The Guarantor has executed and delivered to the Lender, the Term Loan and Security Agreement as continuing collateral security for the obligations of the Guarantor under this Guarantee.
- (D) The Corporation is a wholly-owned subsidiary of the Guarantor. The Guarantor considers it to be in its best interest to provide this Guarantee.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor agrees as follows:

**Article 1 – Guarantee**

**1.1 Guarantee**

The Guarantor irrevocably and unconditionally guarantees to and in favour of the Lender by way of a continuing guarantee, the due and punctual payment and performance, whether at stated maturity, by acceleration or otherwise, of all present and future debts, liabilities and obligations, direct or indirect, absolute or contingent, of the Corporation to the Lender arising pursuant to, or in respect of, the Term Loan and Security Agreement and the other Loan Documents (such obligations, the “**Guaranteed Obligations**”).

**1.2 Indemnity**

If any or all of the Guaranteed Obligations are not paid or performed by the Corporation and are not paid or performed by the Guarantor under Section 1.1 for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Lender from and against all losses, costs and expenses suffered or incurred by the Lender arising from, or in connection with, or as a result of (a) any of the

provisions of the Term Loan and Security Agreement or any of the Loan Documents being or becoming void, voidable, unenforceable or invalid, or (b) the failure of the Corporation to fully and promptly pay or perform any of the Guaranteed Obligations.

### **1.3 Primary Obligation**

If any or all of the Guaranteed Obligations are not paid or performed by the Corporation and are not paid or performed by the Guarantor under Section 1.1 or the Lender is not indemnified under Section 1.2, in each case, for any reason whatsoever, such Guaranteed Obligations will, as a separate and distinct obligation, be paid and performed by the Guarantor as primary obligor immediately upon written demand to the Guarantor by the Lender for such payment or performance.

### **1.4 Absolute Liability**

The Guarantor agrees that the liability of the Guarantor under Section 1.1, Section 1.2 and Section 1.3 is absolute and unconditional and the obligations of the Guarantor in this Guarantee shall remain in full force and effect until all Guaranteed Obligations have been validly, finally and irrevocably paid in full or this Guarantee has been released. The liability and obligations of the Guarantor in this Guarantee shall not be affected by any matter or thing which but for this provision might operate to affect such liability or obligations, including:

- (a) the lack of validity or enforceability of any term of a Credit Document;
- (b) any contest by the Corporation or any other Person as to the amount of the Guaranteed Obligations or the validity or enforceability of any terms of the Loan Documents or the perfection or priority of any security interest granted to the Lender by the Corporation or any other Person;
- (c) any taking or failure to take a security interest by the Lender or any loss of, or loss of value of, any security interest granted to the Lender;
- (d) any defence, counter-claim or right of set-off available to the Corporation or any other Person;
- (e) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Corporation, the Guarantor or any other Person or any reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the Corporation, the Guarantor or any other Person or their respective businesses;
- (f) any extension of time or times for payment or performance of the Guaranteed Obligations or any releases, variations or indulgences which the Lender may grant to the Corporation or any other Person or any extinguishment of all or any part of the Guaranteed Obligations by operation of law;
- (g) any dealings with the security interests which the Lender holds or may hold pursuant to the Loan Documents, including the taking, giving up or exchange of security interests or any collateral subject thereto, the variation or realization

thereof, the accepting of compositions and the granting of releases and discharges;

- (h) any limitation of status or power, disability, incapacity or other circumstance relating to the Corporation, the Guarantor or any other Person, including any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, winding-up or other like proceeding involving or affecting the Corporation, the Guarantor or any other Person or any action taken with respect to this Guarantee by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor has notice or knowledge of any of the foregoing;
- (i) any impossibility, impracticability, frustration of purpose, *force majeure* or illegality of any of the Loan Documents or the Corporation's or Guarantor's performance in respect thereof, or the occurrence of any change in the law of any jurisdiction or by any present or future action of any Governmental Authority that amends, varies, reduces or otherwise affects, or purports to amend, vary, reduce or otherwise affect, any of the Guaranteed Obligations or the obligations of the Guarantor under this Guarantee, or the obtaining of any court order that amends, varies, reduces or otherwise affects any of the Guaranteed Obligations or the obligations of the Guarantor under this Guarantee;
- (j) any invalidity, non-perfection or unenforceability of any security interest held by the Lender, or any exercise or enforcement of, or failure to exercise or enforce, security interests, or any irregularity or defect in the manner or procedure by which the Lender realizes on such security interest;
- (k) the assignment of all or any part of the benefits of this Guarantee; and
- (l) any other circumstances which might otherwise constitute a defence available to, or a discharge of, the Guarantor, the Corporation or any other Person in respect of the Guaranteed Obligations or this Guarantee.

## **Article 2 – Enforcement**

### **2.1 Payment on Demand**

The obligation of the Guarantor to pay the amount of the Guaranteed Obligations and all other amounts payable by it to the Lender under this Guarantee arises, and the Guarantor shall make such payments, immediately after demand for same is made in writing to it by the Lender.

### **2.2 Amount of Guaranteed Obligations**

Any account settled or stated by or between the Lender and the Corporation, or if any such account has not been settled or stated immediately before demand for payment under this Guarantee, any account stated by the Lender shall, in the absence of manifest mathematical error, be accepted by the Guarantor as conclusive evidence of the amount of the Guaranteed Obligations which is due by the Corporation to the Lender or remains unpaid by the Corporation to the Lender.

### 2.3 Interest

The liability of the Guarantor bears interest from the date of demand at the rate or rates of interest then applicable to the Guaranteed Obligations under, and calculated in the manner provided in, the Loan Documents (including any adjustment to give effect to the provisions of the *Interest Act* (Canada)).

### 2.4 Assignment and Postponement

- (a) All obligations, liabilities and indebtedness of the Corporation to the Guarantor of any nature whatsoever and all security therefor (the **Intercorporate Indebtedness**) are hereby assigned and transferred to the Lender as continuing and collateral security for the Guarantor's obligations under this Guarantee. Until notice by the Lender that the Guaranteed Obligations are due and payable, the Guarantor may receive payments in respect of the Intercorporate Indebtedness in accordance with its terms. The Guarantor shall not assign all or any part of the Intercorporate Indebtedness to any Person other than the Lender.
- (b) Upon the occurrence and during the continuance of a Default all Intercorporate Indebtedness shall be held in trust for the Lender and shall be collected, enforced or proved subject to, and for the purpose of, this Guarantee and any payments received the Guarantor in respect of the Intercorporate Indebtedness shall be segregated from other funds and property held by the Guarantor and immediately paid to the Lender on account of the Guaranteed Obligations.
- (c) Upon the occurrence and during the continuance of a Default, the Lender is entitled to receive payment of the Guaranteed Obligations in full before the Guarantor is entitled to receive any payment on account of the Intercorporate Indebtedness. In such case, the Intercorporate Indebtedness shall not be released by the Guarantor until the Lender's prior written consent to such release has been obtained. The Guarantor shall not permit the prescription of the Intercorporate Indebtedness by any statute of limitations or ask for or obtain any security interest or negotiable paper for, or other evidence of, the Intercorporate Indebtedness except for the purpose of delivering the same to the Lender.

### 2.5 Remedies

The Lender need not seek or exhaust its recourse against the Corporation or any other Person or realize on any security interest it may hold in respect of the Guaranteed Obligations before being entitled to (a) enforce payment and performance under this Guarantee, or (b) pursue any other remedy against the Guarantor. Should the Lender elect to realize on any security interest it holds, either before, concurrently with, or after demand for payment under this Guarantee, the Guarantor shall have no right of discussion or division.

### 2.6 No Prejudice to Lender

The Lender is not prejudiced in any way in the right to enforce any provision of this Guarantee by any act or failure to act on the part of the Corporation or the Lender. The Lender may, at any time and from time to time, in such manner as it may determine is expedient, without any consent of, or notice to, the Guarantor, and without impairing or

releasing the obligations of the Guarantor, (a) change the manner, place or terms of payment or change or extend the time of payment of, or renew or alter, all or any part of, the Guaranteed Obligations, (b) renew, determine, vary or increase any credit or credit facilities to, or the terms or conditions in respect of any transaction with, the Corporation or any other Person, (c) release, compound or vary the liability of the Corporation or any other Person liable in any manner under or in respect of the Guaranteed Obligations, (d) accept compromises or arrangements from any Person; (e) exercise or enforce or refrain from exercising or enforcing any right or security interest against the Corporation or any other Person, (f) apply any sums from time to time received to the Guaranteed Obligations or any part thereof, and change any such application in whole or in part from time to time, and (g) otherwise deal with, or waive or modify its right to deal with, any Person and security interest. In its dealings with the Corporation, the Lender need not enquire into the authority or power of any Person purporting to act for or on behalf of the Corporation.

## **2.7 Suspension of Guarantor Rights**

The Guarantor shall not exercise any rights which it may at any time have by reason of the performance of any of its obligations under this Guarantee to (a) be indemnified by the Corporation, (b) claim contribution from any other guarantor of the debts, liabilities or obligations of the Corporation, or (c) take the benefit of any rights of the Lender under any of the Loan Documents.

## **2.8 No Subrogation**

The Guarantor irrevocably waives any claim, remedy or other right which it now has or may hereafter acquire against the Corporation that arises from the existence, payment, performance or enforcement of the Guarantor's obligations under this Guarantee, including any right of subrogation, reimbursement, exoneration, indemnification or any right to participate in any claim or remedy of the Lender against the Corporation or any collateral which the Lender now has or hereafter acquire, whether or not such claim, remedy or other right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and whether or not such claim, remedy or other right arises in equity or under contract, statute or common law. The Guarantor further agrees that the Corporation is an intended third party beneficiary of the Guarantor's waiver contained in this Section 2.8. If any amount is paid to the Guarantor in violation of the preceding sentence and, at such time, the Lender's claims against the Corporation in respect of the Guaranteed Obligations have not been paid in full, any amount paid to the Guarantor will be deemed to have been paid to the Guarantor for the benefit of, and held in trust for, the Lender, and must immediately be paid to the Lender to be credited and applied upon such Guaranteed Obligations. The Guarantor acknowledges that it will receive direct and indirect benefits from the transactions contemplated by this Guarantee and that the waiver set forth in this Section 2.8 is knowingly made in contemplation of such benefits.

## **2.9 No Set-off by Guarantor**

To the fullest extent permitted by law, the Guarantor shall make all payments under this Guarantee without regard to any defence, counter-claim or right of set-off available to it.

## **2.10 Successors of the Corporation**

Any change or changes in the name of or reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the Corporation or its business will not affect or in any way limit or lessen the liability of the Guarantor under this Guarantee or under the Term Loan and Security Agreement. This Guarantee and the Term Loan and Security Agreement extends to any Person acquiring, or from time to time carrying on, the business of the Corporation.

## **2.11 Continuing Guarantee and Continuing Obligations**

The obligation of the Guarantor under Section 1.1 is a continuing guarantee and the obligations of the Guarantor under Section 1.2 and Section 1.3 are continuing obligations. Each of Sections 1.1, 1.2 and 1.3 extends to all present and future Guaranteed Obligations, applies to and secures the ultimate balance of the Guaranteed Obligations due or remaining due to the Lender and is binding as a continuing obligation of the Guarantor until the Lender releases the Guarantor. This Guarantee will continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Lender upon the insolvency, bankruptcy or reorganization of the Corporation or otherwise, all as though such payment had not been made.

## **2.12 Supplemental Security**

This Guarantee is in addition and without prejudice to and supplemental to all other guarantees and security interests held or which may hereafter be held by the Lender.

## **2.13 Security for Guarantee**

The Guarantor acknowledges that this Guarantee is intended to secure payment and performance of the Guaranteed Obligations and that the payment and performance of the Guaranteed Obligations and the other obligations of the Guarantor under this Guarantee are secured by the Term Loan and Security Agreement.

## **2.14 Right of Set-off**

The Lender is authorized by the Guarantor at any time and from time to time and may, to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lender to or for the credit or the account of the Guarantor against any and all of the obligations of the Guarantor now or hereafter existing irrespective of whether or not (a) the Lender has made any demand under this Guarantee, or (b) any of the obligations comprising the Guaranteed Obligations are contingent or unmatured. The rights of the Lender under this Section 2.14 are in addition and without prejudice to and are supplemental to other rights and remedies which the Lender may have.

## **2.15 Interest Act (Canada)**

The Guarantor acknowledges that certain of the rates of interest applicable to the Guaranteed Obligations may be computed on the basis of a year of 360 days or 365 days, as the case may be and paid for the actual number of days elapsed. For purposes

of the *Interest Act* (Canada), whenever any interest is calculated using a rate based on a year of 360 days or 365 days, as the case may be, such rate determined pursuant to such calculation, when expressed as an annual rate is equivalent to (a) the applicable rate based on a year of 360 days or 365 days, as the case may be, (b) multiplied by the actual number of days in the calendar year in which the period for such interest is payable (or compounded) ends, and (c) divided by 360 or 365, as the case may be.

## **2.16 Judgment Currency**

- (a) If for the purposes of obtaining judgment in any court it is necessary to convert all or any part of the Guaranteed Obligations or any other amount due to the Lender in respect of the Guarantor's obligations under this Guarantee in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the Guarantor, to the fullest extent that it may effectively do so, agrees that the rate of exchange used will be that at which, in accordance with normal banking procedures, the Lender could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied.
- (b) The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Lender will, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in such Other Currency the Lender may, in accordance with its normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Lender in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Lender against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Lender in the Original Currency, the Lender agrees to remit such excess to the Guarantor.

## **Article 3 – Representations and Warranties**

The Guarantor represents and warrants to the Lender, acknowledging and confirming that the Lender is relying on such representations and warranties without independent inquiry, as follows.

### **3.1 Incorporation**

The Guarantor is a corporation incorporated, organized and existing under the laws of Canada and is qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which such qualification, licensing or registration is necessary or desirable.

### **3.2 Corporate Power**

The Guarantor has the corporate power and authority to (a) own, lease and operate its properties and assets and to carry on its business as now being conducted by it, and (b) enter into and perform its obligations under the Guarantee and the Term Loan and Security Agreement.



### **3.3 No Conflict or Breach**

The execution and delivery by the Guarantor of the Guarantee and the Term Loan and Security Agreement and the performance by it of its obligations thereunder do not and will not (a) conflict with or result in a breach or violation of any (i) of its constating documents or by-laws, (ii) applicable Law, (iii) contractual restriction binding on or affecting it or its properties, or (iv) judgment, injunction, determination or award which is binding on it, or (b) result in, require or permit the acceleration of the maturity of any debt binding on or affecting the Guarantor.

### **3.4 Corporate and Other Authorizations**

The execution and delivery by the Guarantor of the Guarantee and the Term Loan and Security Agreement and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate action. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Entity or other Person, is or was necessary in connection with the execution, delivery and performance of obligations by the Guarantor under the Guarantee and the Term Loan and Security Agreement except as are in full force and effect, unamended, at the date of this Guarantee.

### **3.5 Execution and Binding Obligation**

This Guarantee and the Term Loan and Security Agreement have been duly executed and delivered by the Guarantor and constitute legal, valid and binding obligations of the Guarantor, enforceable against it in accordance with their respective terms.

## **Article 4 – Taxes**

### **4.1 Taxes**

All payments to the Lender by the Guarantor under this Guarantee or under the Term Loan and Security Agreement shall be made free and clear of and without deduction or withholding for any and all Taxes except as required by applicable Law to be deducted or withheld. If the Guarantor is required by applicable Law to deduct or withhold any Taxes from or in respect of any amount payable under this Guarantee or under the Term Loan and Security Agreement (a) the amount payable shall be increased (and for greater certainty, in the case of interest, the amount of interest shall be increased) as may be necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to any additional amounts paid under this Article 4 ), the Lender receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (b) the Guarantor shall make such deductions or withholdings, (c) the Guarantor shall immediately pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law, and (d) the Guarantor shall deliver to the Lender as soon as practicable after it has made such payment to the applicable Governmental Authority (i) a copy of any receipt issued by the Governmental Authority evidencing the payment of all amounts required to be deducted or withheld from the sum payable hereunder or (ii) if such a receipt is not available from such Governmental Authority, notice of the payment of the amount deducted or withheld.

## **4.2 Payment of Other Taxes**

The Guarantor agrees to immediately pay any Other Taxes which arise from any payment made by the Guarantor under this Guarantee or under the Term Loan and Security Agreement or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee or the Term Loan and Security Agreement.

## **4.3 Tax Indemnity**

- (a) The Guarantor shall indemnify the Lender for the full amount of Taxes or Other Taxes paid by the Lender and any liability (including penalties, interest and expenses) arising from or with respect to such Taxes or Other Taxes, whether or not they were correctly or legally asserted. In addition, the Guarantor shall indemnify the Lender for any Taxes, Other Taxes or tax based on or measured by the overall net income of the Lender (Net Income Taxes) imposed by any jurisdiction on or with respect to any increased amount payable by the Guarantor under Section 4.1 or any payment or indemnity payable by such Guarantor under Section 4.2 or this Section 4.3. Payment under this indemnification shall be made within 30 days from the date the Lender makes written demand for it. A certificate as to the amount of such Taxes or Other Taxes submitted to the Guarantor by the Lender is conclusive evidence, absent manifest error, of the amount due from the Guarantor to the Lender.
- (b) The Guarantor shall furnish to the Lender the original or a certified copy of a receipt evidencing payment of Taxes or Other Taxes made by the Guarantor within 30 days after the date of any payment of Taxes or Other Taxes.

## **4.4 Entitlement to Exemption**

The Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Guarantor is resident for tax purposes, or any treaty to which that jurisdiction is a party, with respect to payments under the Guarantee shall, at the request of the Guarantor, deliver to the Guarantor, at the time or times prescribed by applicable Law or reasonably requested by the Guarantor, all properly completed and executed documentation prescribed by applicable Law that will permit the payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if requested by the Guarantor, shall deliver other documentation prescribed by applicable law or reasonably requested by the Guarantor that will enable the Guarantor to determine whether or not the Lender is subject to withholding or information reporting requirements.

## **4.5 Survival**

The provisions of this Article 4 survive the termination of this Guarantee.

## **4.6 Definitions**

In this Article 4 words and expressions have the following meanings:

**Other Taxes** means present and future stamp and documentary taxes and any other excise and property taxes, charges, financial institutions duties, debits taxes and similar levies which arise from any payment made by the Guarantor under this Guarantee or under any of the Loan Documents or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee or any of the Loan Documents.

**Taxes** means taxes, levies, imposts, deductions, charges or withholdings imposed by a Governmental Authority, and all liabilities with respect thereto; excluding taxes imposed on or measured by the net income of Lender.

## **Article 5 – General**

### **5.1 Notices, Etc.**

Any notice, consent, waiver or other communication given under this Guarantee or any Guarantor Security Agreement must be in writing and may be given by delivering it in accordance with the Term Loan and Security Agreement.

### **5.2 Defined Terms**

Capitalized terms used in this Guarantee and not otherwise defined have the respective meanings given to them in the Term Loan and Security Agreement.

### **5.3 Gender and Number**

Any reference in this Guarantee to gender includes all genders and words importing the singular include the plural and *vice versa*.

### **5.4 Headings, etc.**

The inclusion of a table of contents, the division of this Guarantee into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Guarantee.

### **5.5 Currency**

All monetary amounts in this Guarantee, unless otherwise specifically indicated, are stated in Canadian currency.

### **5.6 No Merger, Survival of Representations and Warranties**

The representations and warranties of the Guarantor in this Guarantee survive the execution and delivery of this Guarantee and notwithstanding any investigation made by or on behalf of the Lender, continue in full force and effect.

### **5.7 Time of Essence**

Time is of the essence in this Guarantee and the time for performance of the obligations of the Guarantor under this Guarantee may be strictly enforced by the Lender.

## **5.8 No Collateral Promises**

This Guarantee shall not be subject to or affected by any promise or condition affecting or limiting the liability of the Guarantor except as expressly set out in this Guarantee. No statement, representation, agreement or promise on the part of the Lender or any officer, employee or agent thereof, unless set out in this Guarantee, forms any part of this Guarantee or any Credit Document or has induced its creation or shall be deemed in any way to have affected the liability of the Guarantor.

## **5.9 Further Assurances**

The Guarantor will do all acts and things and execute and deliver, or cause to be executed and delivered, all documents and instruments that the Lender may reasonably request to (a) give full effect to this Guarantee and the Term Loan and Security Agreement, and (b) to perfect and preserve the rights and powers of the Lender under this Guarantee and the Term Loan and Security Agreement.

## **5.10 Payment of Expenses**

The Guarantor will pay on demand, and will indemnify and save the Lender harmless from, any and all costs and expenses (including reasonable legal fees and expenses) (a) incurred by or on behalf of the Lender in the administration or enforcement of this Guarantee, or (b) with respect to, or resulting from, any failure or delay by the Guarantor in performing or observing any of its obligations under this Guarantee.

## **5.11 Amendment**

This Guarantee may only be amended, supplemented or otherwise modified by written agreement of the Lender and the Guarantor.

## **5.12 Waivers, etc.**

- (a) No consent or waiver by the Lender in connection with this Guarantee is binding unless made in writing and signed by an authorized officer of the Lender. Any consent or waiver given under this Guarantee is effective only in the specific instance and for the specific purpose for which it was given. No waiver of any of the provisions of this Guarantee constitutes a waiver of any other provision.
- (b) A failure or delay on the part of the Lender in exercising a right or remedy under this Guarantee or the Term Loan and Security Agreement does not operate as a waiver of, or impair, any rights or remedies of the Lender however arising. A single or partial exercise of a right or remedy on the part of the Lender does not preclude any other or further exercise of that right or remedy or the exercise of any other rights or remedies by the Lender.

## **5.13 Successors and Assigns**

This Guarantee is binding upon the Guarantor, its successors and assigns, and enures to the benefit of the Lender and its successors and permitted assigns. All rights of the Lender are assignable without any requirement of consent on the part of the Guarantor and in any action brought by an assignee to enforce any such right, the Guarantor shall

not assert against the assignee any claim or defence which the Guarantor now has or hereafter may have against the Lender. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Lender.

#### **5.14 Severability**

If any provision of this Guarantee is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable that provision will be severed from this Guarantee and the remaining provisions will continue in full force and effect, without limitation.

#### **5.15 Governing Law**

This Guarantee is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without regard to conflict of law principles. Each party to this Guarantee irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Alberta.

#### **5.16 Counterparts**

This Guarantee may be executed in any number of separate counterparts and all such signed counterparts constitute one and the same agreement. Delivery by facsimile or other electronic means of an originally executed signature page to this Guarantee by a party is as effective as personal delivery of such signature page.

#### **5.17 Copy of Guarantee**

The Guarantor acknowledges receipt of an executed copy of this Guarantee.

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**IN WITNESS WHEREOF** the Guarantor has executed and delivered this Guarantee.

**NEW WEST ENERGY SERVICES INC.**

By:

\_\_\_\_\_   
Authorized Signing Officer

Accepted and agreed by the Lender

**NATIONS FUND I, LLC**

By:

\_\_\_\_\_   
Authorized Signing Officer

**Dated**

**July [add], 2019**

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**NEW WEST ENERGY SERVICES INC.**

**and**

**NATIONS FUND I, LLC**

**GUARANTEE**

(Revolving Term Loan and Security Agreement)

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**THIS GUARANTEE** is dated July [add], 2019 and made between:

- (1) **NEW WEST ENERGY SERVICES INC.**, a corporation formed under the laws of Alberta (the “**Guarantor**”); and
- (2) **NATIONS FUND I, LLC**, a limited liability company formed under the laws of Connecticut (the “**Lender**”).

**RECITALS:**

- (A) The Lender has agreed to make certain credit facilities available to **SILVERPOINT ENERGY SERVICES INC.** (the “**Corporation**”) upon the terms and conditions contained in a revolving term loan and security agreement among the Corporation, the Guarantor and the Lender dated as of this date (such loan agreement as it may at any time or from time to time be amended, supplemented, restated or replaced, the “**Revolving Term Loan and Security Agreement**”).
- (B) The Guarantor has agreed with the Lender to guarantee the payment and performance of all present and future debts, liabilities and obligations, direct or indirect, absolute or contingent, of the Corporation to the Lender arising pursuant to, or in respect of, the Revolving Term Loan and Security Agreement and the other Loan Documents.
- (C) The Guarantor has executed and delivered to the Lender, the Revolving Term Loan and Security Agreement as continuing collateral security for the obligations of the Guarantor under this Guarantee.
- (D) The Corporation is a wholly-owned subsidiary of the Guarantor. The Guarantor considers it to be in its best interest to provide this Guarantee.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor agrees as follows:

**Article 1 – Guarantee**

**1.1 Guarantee**

The Guarantor irrevocably and unconditionally guarantees to and in favour of the Lender by way of a continuing guarantee, the due and punctual payment and performance, whether at stated maturity, by acceleration or otherwise, of all present and future debts, liabilities and obligations, direct or indirect, absolute or contingent, of the Corporation to the Lender arising pursuant to, or in respect of, the Revolving Term Loan and Security Agreement and the other Loan Documents (such obligations, the “**Guaranteed Obligations**”).

**1.2 Indemnity**

If any or all of the Guaranteed Obligations are not paid or performed by the Corporation and are not paid or performed by the Guarantor under Section 1.1 for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Lender from and against all losses, costs and expenses suffered or

incurred by the Lender arising from, or in connection with, or as a result of (a) any of the provisions of the Revolving Term Loan and Security Agreement or any of the Loan Documents being or becoming void, voidable, unenforceable or invalid, or (b) the failure of the Corporation to fully and promptly pay or perform any of the Guaranteed Obligations.

### **1.3 Primary Obligation**

If any or all of the Guaranteed Obligations are not paid or performed by the Corporation and are not paid or performed by the Guarantor under Section 1.1 or the Lender is not indemnified under Section 1.2, in each case, for any reason whatsoever, such Guaranteed Obligations will, as a separate and distinct obligation, be paid and performed by the Guarantor as primary obligor immediately upon written demand to the Guarantor by the Lender for such payment or performance.

### **1.4 Absolute Liability**

The Guarantor agrees that the liability of the Guarantor under Section 1.1, Section 1.2 and Section 1.3 is absolute and unconditional and the obligations of the Guarantor in this Guarantee shall remain in full force and effect until all Guaranteed Obligations have been validly, finally and irrevocably paid in full or this Guarantee has been released. The liability and obligations of the Guarantor in this Guarantee shall not be affected by any matter or thing which but for this provision might operate to affect such liability or obligations, including:

- (a) the lack of validity or enforceability of any term of a Credit Document;
- (b) any contest by the Corporation or any other Person as to the amount of the Guaranteed Obligations or the validity or enforceability of any terms of the Loan Documents or the perfection or priority of any security interest granted to the Lender by the Corporation or any other Person;
- (c) any taking or failure to take a security interest by the Lender or any loss of, or loss of value of, any security interest granted to the Lender;
- (d) any defence, counter-claim or right of set-off available to the Corporation or any other Person;
- (e) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Corporation, the Guarantor or any other Person or any reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the Corporation, the Guarantor or any other Person or their respective businesses;
- (f) any extension of time or times for payment or performance of the Guaranteed Obligations or any releases, variations or indulgences which the Lender may grant to the Corporation or any other Person or any extinguishment of all or any part of the Guaranteed Obligations by operation of law;
- (g) any dealings with the security interests which the Lender holds or may hold pursuant to the Loan Documents, including the taking, giving up or exchange of

security interests or any collateral subject thereto, the variation or realization thereof, the accepting of compositions and the granting of releases and discharges;

- (h) any limitation of status or power, disability, incapacity or other circumstance relating to the Corporation, the Guarantor or any other Person, including any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, winding-up or other like proceeding involving or affecting the Corporation, the Guarantor or any other Person or any action taken with respect to this Guarantee by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor has notice or knowledge of any of the foregoing;
- (i) any impossibility, impracticability, frustration of purpose, *force majeure* or illegality of any of the Loan Documents or the Corporation's or Guarantor's performance in respect thereof, or the occurrence of any change in the law of any jurisdiction or by any present or future action of any Governmental Authority that amends, varies, reduces or otherwise affects, or purports to amend, vary, reduce or otherwise affect, any of the Guaranteed Obligations or the obligations of the Guarantor under this Guarantee, or the obtaining of any court order that amends, varies, reduces or otherwise affects any of the Guaranteed Obligations or the obligations of the Guarantor under this Guarantee;
- (j) any invalidity, non-perfection or unenforceability of any security interest held by the Lender, or any exercise or enforcement of, or failure to exercise or enforce, security interests, or any irregularity or defect in the manner or procedure by which the Lender realizes on such security interest;
- (k) the assignment of all or any part of the benefits of this Guarantee; and
- (l) any other circumstances which might otherwise constitute a defence available to, or a discharge of, the Guarantor, the Corporation or any other Person in respect of the Guaranteed Obligations or this Guarantee.

## **Article 2 – Enforcement**

### **2.1 Payment on Demand**

The obligation of the Guarantor to pay the amount of the Guaranteed Obligations and all other amounts payable by it to the Lender under this Guarantee arises, and the Guarantor shall make such payments, immediately after demand for same is made in writing to it by the Lender.

### **2.2 Amount of Guaranteed Obligations**

Any account settled or stated by or between the Lender and the Corporation, or if any such account has not been settled or stated immediately before demand for payment under this Guarantee, any account stated by the Lender shall, in the absence of manifest mathematical error, be accepted by the Guarantor as conclusive evidence of the amount of the Guaranteed Obligations which is due by the Corporation to the Lender or remains unpaid by the Corporation to the Lender.

## 2.3 Interest

The liability of the Guarantor bears interest from the date of demand at the rate or rates of interest then applicable to the Guaranteed Obligations under, and calculated in the manner provided in, the Loan Documents (including any adjustment to give effect to the provisions of the *Interest Act* (Canada)).

## 2.4 Assignment and Postponement

- (a) All obligations, liabilities and indebtedness of the Corporation to the Guarantor of any nature whatsoever and all security therefor (the **Intercorporate Indebtedness**) are hereby assigned and transferred to the Lender as continuing and collateral security for the Guarantor's obligations under this Guarantee. Until notice by the Lender that the Guaranteed Obligations are due and payable, the Guarantor may receive payments in respect of the Intercorporate Indebtedness in accordance with its terms. The Guarantor shall not assign all or any part of the Intercorporate Indebtedness to any Person other than the Lender.
- (b) Upon the occurrence and during the continuance of a Default all Intercorporate Indebtedness shall be held in trust for the Lender and shall be collected, enforced or proved subject to, and for the purpose of, this Guarantee and any payments received the Guarantor in respect of the Intercorporate Indebtedness shall be segregated from other funds and property held by the Guarantor and immediately paid to the Lender on account of the Guaranteed Obligations.
- (c) Upon the occurrence and during the continuance of a Default, the Lender is entitled to receive payment of the Guaranteed Obligations in full before the Guarantor is entitled to receive any payment on account of the Intercorporate Indebtedness. In such case, the Intercorporate Indebtedness shall not be released by the Guarantor until the Lender's prior written consent to such release has been obtained. The Guarantor shall not permit the prescription of the Intercorporate Indebtedness by any statute of limitations or ask for or obtain any security interest or negotiable paper for, or other evidence of, the Intercorporate Indebtedness except for the purpose of delivering the same to the Lender.

## 2.5 Remedies

The Lender need not seek or exhaust its recourse against the Corporation or any other Person or realize on any security interest it may hold in respect of the Guaranteed Obligations before being entitled to (a) enforce payment and performance under this Guarantee, or (b) pursue any other remedy against the Guarantor. Should the Lender elect to realize on any security interest it holds, either before, concurrently with, or after demand for payment under this Guarantee, the Guarantor shall have no right of discussion or division.

## 2.6 No Prejudice to Lender

The Lender is not prejudiced in any way in the right to enforce any provision of this Guarantee by any act or failure to act on the part of the Corporation or the Lender. The Lender may, at any time and from time to time, in such manner as it may determine is expedient, without any consent of, or notice to, the Guarantor, and without impairing or

releasing the obligations of the Guarantor, (a) change the manner, place or terms of payment or change or extend the time of payment of, or renew or alter, all or any part of, the Guaranteed Obligations, (b) renew, determine, vary or increase any credit or credit facilities to, or the terms or conditions in respect of any transaction with, the Corporation or any other Person, (c) release, compound or vary the liability of the Corporation or any other Person liable in any manner under or in respect of the Guaranteed Obligations, (d) accept compromises or arrangements from any Person; (e) exercise or enforce or refrain from exercising or enforcing any right or security interest against the Corporation or any other Person, (f) apply any sums from time to time received to the Guaranteed Obligations or any part thereof, and change any such application in whole or in part from time to time, and (g) otherwise deal with, or waive or modify its right to deal with, any Person and security interest. In its dealings with the Corporation, the Lender need not enquire into the authority or power of any Person purporting to act for or on behalf of the Corporation.

## **2.7 Suspension of Guarantor Rights**

The Guarantor shall not exercise any rights which it may at any time have by reason of the performance of any of its obligations under this Guarantee to (a) be indemnified by the Corporation, (b) claim contribution from any other guarantor of the debts, liabilities or obligations of the Corporation, or (c) take the benefit of any rights of the Lender under any of the Loan Documents.

## **2.8 No Subrogation**

The Guarantor irrevocably waives any claim, remedy or other right which it now has or may hereafter acquire against the Corporation that arises from the existence, payment, performance or enforcement of the Guarantor's obligations under this Guarantee, including any right of subrogation, reimbursement, exoneration, indemnification or any right to participate in any claim or remedy of the Lender against the Corporation or any collateral which the Lender now has or hereafter acquire, whether or not such claim, remedy or other right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and whether or not such claim, remedy or other right arises in equity or under contract, statute or common law. The Guarantor further agrees that the Corporation is an intended third party beneficiary of the Guarantor's waiver contained in this Section 2.8. If any amount is paid to the Guarantor in violation of the preceding sentence and, at such time, the Lender's claims against the Corporation in respect of the Guaranteed Obligations have not been paid in full, any amount paid to the Guarantor will be deemed to have been paid to the Guarantor for the benefit of, and held in trust for, the Lender, and must immediately be paid to the Lender to be credited and applied upon such Guaranteed Obligations. The Guarantor acknowledges that it will receive direct and indirect benefits from the transactions contemplated by this Guarantee and that the waiver set forth in this Section 2.8 is knowingly made in contemplation of such benefits.

## **2.9 No Set-off by Guarantor**

To the fullest extent permitted by law, the Guarantor shall make all payments under this Guarantee without regard to any defence, counter-claim or right of set-off available to it.

## **2.10 Successors of the Corporation**

Any change or changes in the name of or reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the Corporation or its business will not affect or in any way limit or lessen the liability of the Guarantor under this Guarantee or under the Revolving Term Loan and Security Agreement. This Guarantee and the Revolving Term Loan and Security Agreement extends to any Person acquiring, or from time to time carrying on, the business of the Corporation.

## **2.11 Continuing Guarantee and Continuing Obligations**

The obligation of the Guarantor under Section 1.1 is a continuing guarantee and the obligations of the Guarantor under Section 1.2 and Section 1.3 are continuing obligations. Each of Sections 1.1, 1.2 and 1.3 extends to all present and future Guaranteed Obligations, applies to and secures the ultimate balance of the Guaranteed Obligations due or remaining due to the Lender and is binding as a continuing obligation of the Guarantor until the Lender releases the Guarantor. This Guarantee will continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Lender upon the insolvency, bankruptcy or reorganization of the Corporation or otherwise, all as though such payment had not been made.

## **2.12 Supplemental Security**

This Guarantee is in addition and without prejudice to and supplemental to all other guarantees and security interests held or which may hereafter be held by the Lender.

## **2.13 Security for Guarantee**

The Guarantor acknowledges that this Guarantee is intended to secure payment and performance of the Guaranteed Obligations and that the payment and performance of the Guaranteed Obligations and the other obligations of the Guarantor under this Guarantee are secured by the Revolving Term Loan and Security Agreement.

## **2.14 Right of Set-off**

The Lender is authorized by the Guarantor at any time and from time to time and may, to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lender to or for the credit or the account of the Guarantor against any and all of the obligations of the Guarantor now or hereafter existing irrespective of whether or not (a) the Lender has made any demand under this Guarantee, or (b) any of the obligations comprising the Guaranteed Obligations are contingent or unmatured. The rights of the Lender under this Section 2.14 are in addition and without prejudice to and are supplemental to other rights and remedies which the Lender may have.

## **2.15 Interest Act (Canada)**

The Guarantor acknowledges that certain of the rates of interest applicable to the Guaranteed Obligations may be computed on the basis of a year of 360 days or 365

days, as the case may be and paid for the actual number of days elapsed. For purposes of the *Interest Act* (Canada), whenever any interest is calculated using a rate based on a year of 360 days or 365 days, as the case may be, such rate determined pursuant to such calculation, when expressed as an annual rate is equivalent to (a) the applicable rate based on a year of 360 days or 365 days, as the case may be, (b) multiplied by the actual number of days in the calendar year in which the period for such interest is payable (or compounded) ends, and (c) divided by 360 or 365, as the case may be.

## **2.16 Judgment Currency**

- (a) If for the purposes of obtaining judgment in any court it is necessary to convert all or any part of the Guaranteed Obligations or any other amount due to the Lender in respect of the Guarantor's obligations under this Guarantee in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the Guarantor, to the fullest extent that it may effectively do so, agrees that the rate of exchange used will be that at which, in accordance with normal banking procedures, the Lender could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied.
- (b) The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Lender will, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in such Other Currency the Lender may, in accordance with its normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Lender in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Lender against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Lender in the Original Currency, the Lender agrees to remit such excess to the Guarantor.

## **Article 3 – Representations and Warranties**

The Guarantor represents and warrants to the Lender, acknowledging and confirming that the Lender is relying on such representations and warranties without independent inquiry, as follows.

### **3.1 Incorporation**

The Guarantor is a corporation incorporated, organized and existing under the laws of Canada and is qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which such qualification, licensing or registration is necessary or desirable.

### **3.2 Corporate Power**

The Guarantor has the corporate power and authority to (a) own, lease and operate its properties and assets and to carry on its business as now being conducted by it, and (b)



enter into and perform its obligations under the Guarantee and the Revolving Term Loan and Security Agreement.

### **3.3 No Conflict or Breach**

The execution and delivery by the Guarantor of the Guarantee and the Revolving Term Loan and Security Agreement and the performance by it of its obligations thereunder do not and will not (a) conflict with or result in a breach or violation of any (i) of its constating documents or by-laws, (ii) applicable Law, (iii) contractual restriction binding on or affecting it or its properties, or (iv) judgment, injunction, determination or award which is binding on it, or (b) result in, require or permit the acceleration of the maturity of any debt binding on or affecting the Guarantor.

### **3.4 Corporate and Other Authorizations**

The execution and delivery by the Guarantor of the Guarantee and the Revolving Term Loan and Security Agreement and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate action. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Entity or other Person, is or was necessary in connection with the execution, delivery and performance of obligations by the Guarantor under the Guarantee and the Revolving Term Loan and Security Agreement except as are in full force and effect, unamended, at the date of this Guarantee.

### **3.5 Execution and Binding Obligation**

This Guarantee and the Revolving Term Loan and Security Agreement have been duly executed and delivered by the Guarantor and constitute legal, valid and binding obligations of the Guarantor, enforceable against it in accordance with their respective terms.

## **Article 4 – Taxes**

### **4.1 Taxes**

All payments to the Lender by the Guarantor under this Guarantee or under the Revolving Term Loan and Security Agreement shall be made free and clear of and without deduction or withholding for any and all Taxes except as required by applicable Law to be deducted or withheld. If the Guarantor is required by applicable Law to deduct or withhold any Taxes from or in respect of any amount payable under this Guarantee or under the Revolving Term Loan and Security Agreement (a) the amount payable shall be increased (and for greater certainty, in the case of interest, the amount of interest shall be increased) as may be necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to any additional amounts paid under this Article 4 ), the Lender receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (b) the Guarantor shall make such deductions or withholdings, (c) the Guarantor shall immediately pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law, and (d) the Guarantor shall deliver to the Lender as soon as practicable after it has made such payment to the applicable Governmental Authority (i) a copy of any receipt issued by the Governmental Authority evidencing the payment of

all amounts required to be deducted or withheld from the sum payable hereunder or (ii) if such a receipt is not available from such Governmental Authority, notice of the payment of the amount deducted or withheld.

#### **4.2 Payment of Other Taxes**

The Guarantor agrees to immediately pay any Other Taxes which arise from any payment made by the Guarantor under this Guarantee or under the Revolving Term Loan and Security Agreement or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee or the Revolving Term Loan and Security Agreement.

#### **4.3 Tax Indemnity**

- (a) The Guarantor shall indemnify the Lender for the full amount of Taxes or Other Taxes paid by the Lender and any liability (including penalties, interest and expenses) arising from or with respect to such Taxes or Other Taxes, whether or not they were correctly or legally asserted. In addition, the Guarantor shall indemnify the Lender for any Taxes, Other Taxes or tax based on or measured by the overall net income of the Lender (Net Income Taxes) imposed by any jurisdiction on or with respect to any increased amount payable by the Guarantor under Section 4.1 or any payment or indemnity payable by such Guarantor under Section 4.2 or this Section 4.3. Payment under this indemnification shall be made within 30 days from the date the Lender makes written demand for it. A certificate as to the amount of such Taxes or Other Taxes submitted to the Guarantor by the Lender is conclusive evidence, absent manifest error, of the amount due from the Guarantor to the Lender.
- (b) The Guarantor shall furnish to the Lender the original or a certified copy of a receipt evidencing payment of Taxes or Other Taxes made by the Guarantor within 30 days after the date of any payment of Taxes or Other Taxes.

#### **4.4 Entitlement to Exemption**

The Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Guarantor is resident for tax purposes, or any treaty to which that jurisdiction is a party, with respect to payments under the Guarantee shall, at the request of the Guarantor, deliver to the Guarantor, at the time or times prescribed by applicable Law or reasonably requested by the Guarantor, all properly completed and executed documentation prescribed by applicable Law that will permit the payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if requested by the Guarantor, shall deliver other documentation prescribed by applicable law or reasonably requested by the Guarantor that will enable the Guarantor to determine whether or not the Lender is subject to withholding or information reporting requirements.

#### **4.5 Survival**

The provisions of this Article 4 survive the termination of this Guarantee.

#### **4.6 Definitions**

In this Article 4 words and expressions have the following meanings:

**Other Taxes** means present and future stamp and documentary taxes and any other excise and property taxes, charges, financial institutions duties, debits taxes and similar levies which arise from any payment made by the Guarantor under this Guarantee or under any of the Loan Documents or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee or any of the Loan Documents.

**Taxes** means taxes, levies, imposts, deductions, charges or withholdings imposed by a Governmental Authority, and all liabilities with respect thereto; excluding taxes imposed on or measured by the net income of Lender.

### **Article 5 – General**

#### **5.1 Notices, Etc.**

Any notice, consent, waiver or other communication given under this Guarantee or any Guarantor Security Agreement must be in writing and may be given by delivering it in accordance with the Revolving Term Loan and Security Agreement.

#### **5.2 Defined Terms**

Capitalized terms used in this Guarantee and not otherwise defined have the respective meanings given to them in the Revolving Term Loan and Security Agreement.

#### **5.3 Gender and Number**

Any reference in this Guarantee to gender includes all genders and words importing the singular include the plural and *vice versa*.

#### **5.4 Headings, etc.**

The inclusion of a table of contents, the division of this Guarantee into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Guarantee.

#### **5.5 Currency**

All monetary amounts in this Guarantee, unless otherwise specifically indicated, are stated in Canadian currency.

#### **5.6 No Merger, Survival of Representations and Warranties**

The representations and warranties of the Guarantor in this Guarantee survive the execution and delivery of this Guarantee and notwithstanding any investigation made by or on behalf of the Lender, continue in full force and effect.

## **5.7 Time of Essence**

Time is of the essence in this Guarantee and the time for performance of the obligations of the Guarantor under this Guarantee may be strictly enforced by the Lender.

## **5.8 No Collateral Promises**

This Guarantee shall not be subject to or affected by any promise or condition affecting or limiting the liability of the Guarantor except as expressly set out in this Guarantee. No statement, representation, agreement or promise on the part of the Lender or any officer, employee or agent thereof, unless set out in this Guarantee, forms any part of this Guarantee or any Credit Document or has induced its creation or shall be deemed in any way to have affected the liability of the Guarantor.

## **5.9 Further Assurances**

The Guarantor will do all acts and things and execute and deliver, or cause to be executed and delivered, all documents and instruments that the Lender may reasonably request to (a) give full effect to this Guarantee and the Revolving Term Loan and Security Agreement, and (b) to perfect and preserve the rights and powers of the Lender under this Guarantee and the Revolving Term Loan and Security Agreement.

## **5.10 Payment of Expenses**

The Guarantor will pay on demand, and will indemnify and save the Lender harmless from, any and all costs and expenses (including reasonable legal fees and expenses) (a) incurred by or on behalf of the Lender in the administration or enforcement of this Guarantee, or (b) with respect to, or resulting from, any failure or delay by the Guarantor in performing or observing any of its obligations under this Guarantee.

## **5.11 Amendment**

This Guarantee may only be amended, supplemented or otherwise modified by written agreement of the Lender and the Guarantor.

## **5.12 Waivers, etc.**

(a) No consent or waiver by the Lender in connection with this Guarantee is binding unless made in writing and signed by an authorized officer of the Lender. Any consent or waiver given under this Guarantee is effective only in the specific instance and for the specific purpose for which it was given. No waiver of any of the provisions of this Guarantee constitutes a waiver of any other provision.

- (b) A failure or delay on the part of the Lender in exercising a right or remedy under this Guarantee or the Revolving Term Loan and Security Agreement does not operate as a waiver of, or impair, any rights or remedies of the Lender however arising. A single or partial exercise of a right or remedy on the part of the Lender does not preclude any other or further exercise of that right or remedy or the exercise of any other rights or remedies by the Lender.

### **5.13 Successors and Assigns**

This Guarantee is binding upon the Guarantor, its successors and assigns, and enures to the benefit of the Lender and its successors and permitted assigns. All rights of the Lender are assignable without any requirement of consent on the part of the Guarantor and in any action brought by an assignee to enforce any such right, the Guarantor shall not assert against the assignee any claim or defence which the Guarantor now has or hereafter may have against the Lender. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Lender.

### **5.14 Severability**

If any provision of this Guarantee is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable that provision will be severed from this Guarantee and the remaining provisions will continue in full force and effect, without limitation.

### **5.15 Governing Law**

This Guarantee is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without regard to conflict of law principles. Each party to this Guarantee irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Alberta.

### **5.16 Counterparts**

This Guarantee may be executed in any number of separate counterparts and all such signed counterparts constitute one and the same agreement. Delivery by facsimile or other electronic means of an originally executed signature page to this Guarantee by a party is as effective as personal delivery of such signature page.

### **5.17 Copy of Guarantee**

The Guarantor acknowledges receipt of an executed copy of this Guarantee.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF** the Guarantor has executed and delivered this Guarantee.

**NEW WEST ENERGY SERVICES INC.**

By:

\_\_\_\_\_

Authorized Signing Officer

Accepted and agreed by the Lender

**NATIONS FUND I, LLC**

By:

\_\_\_\_\_

Authorized Signing Officer

**SCHEDULE "H"**  
**TERMINATION OF EXISTING GUARANTEES**

**TO: New West Energy Services Inc. (the "Guarantor")**

**RE: Asset Purchase and Sale Agreement (the "Agreement") dated July 15, 2019 among the Guarantor, the BearStone Environmental Solutions Inc. (the "Vendor"), Silverpoint Energy Services Inc. (the "Purchaser") and Nations Fund I, LLC (the "Lender")**

WHEREAS:

A. the Guarantor, Vendor and Lender are parties to a term loan and security agreement and a revolving term loan and security agreement, both dated March 9, 2017 (each a "Loan Agreement", together the "Loan Agreements");

B. upon entering into the Loan Agreements, the Guarantor and Lender entered into a guarantee in respect of each Loan Agreement, also dated March 9, 2017 (such guarantees being, the "Existing Guarantees");

C. concurrent with the closing of the transactions contemplated in the Agreement, the Guarantor, Purchaser and Lender are entering into a term loan and security agreement and a revolving term loan and security agreement (the "New Loan Agreements"); and

D. concurrent with the entering into of the New Loan Agreements, the Guarantor and Lender will enter into a new guarantee in respect of each New Loan Agreement (such guarantees being, the "New Guarantees"), whereupon the Existing Guarantees shall be terminated.

NOW THEREFORE, for consideration, the receipt and sufficiency of which is hereby acknowledged by the Lender and Guarantor, the Lender hereby confirms and agrees that the Existing Guarantees are hereby terminated in their entirety and are no longer in force and effect.

DATED this \_\_\_ day of \_\_\_\_\_, 2019.

**NATIONS FUND I, LLC**

Per:

\_\_\_\_\_  
Name:  
Title:

**SCHEDULE "I"**  
**ACKNOWLEDGEMENT OF REDUCTION OF DEBT**

**TO: BearStone Environmental Solutions Inc. (the "Vendor")**

**RE: Asset Purchase and Sale Agreement (the "Agreement") dated July 15, 2019 among the Vendor, New West Energy Services Inc., Silverpoint Energy Services Inc. (the "Purchaser") and Nations Fund I, LLC (the "Lender")**

WHEREAS:

- A. the Vendor was indebted to the Lender in the amount of \$[add];
- B. pursuant to the Agreement, the Vendor sold, assigned, transferred and conveyed to the Purchaser the Purchased Assets (as defined in the Agreement) for a deemed purchase price of \$2,733,911. As consideration for the Vendor selling, assigning, transferring and conveying to the Purchaser the Purchased Assets, the Purchaser has assumed \$2,733,911 of the Vendor's current secured indebtedness to the Lender, subject to certain adjustment.

NOW THEREFORE, the Lender hereby acknowledges that the Vendor's secured indebtedness of \$[add] was reduced by the amount of debt assumed by the Purchaser, being \$2,733,911 (such amount not being subject to adjustment) and, as a result, the Vendor is as of the date hereof now indebted to the Lender in the amount of \$[add].

DATED this \_\_\_ day of \_\_\_\_\_, 2019.

**SILVERPOINT ENERGY SERVICES INC.**

Per:

\_\_\_\_\_  
Name:  
Title: